

Children Behind Bars:

An Analysis of the Implementation Gap between Law and Practice of Child Detention in the Philippines

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For all the detained children in conflict with the law
whose rights have been violated, and
whose voices are silenced.

List of Abbreviations

BCPC – *Barangay* Council for the Protection of Children

CICL – Children in Conflict with the Law

CJIP – Comprehensive Juvenile Intervention Program

CSWDO – City Social Welfare and Development Office

CWC – Council for the Welfare of Children

DSWD – Department of Social Welfare and Development

ICCPR – International Covenant on Civil and Political Rights

JJWA – Juvenile Justice and Welfare Act

JJWC – Juvenile Justice and Welfare Council

LCPC – Local Council for the Protection of Children

LGU – Local Government Unit

NGO – Non-Government Organizations

P.D. – Presidential Decree

R.A. – Republic Act

UDHR – Universal Declaration of Human Rights

UNCRC – United Nations Convention on the Rights of the Child

Abstract

This thesis examines the policy implementation gap between the Philippines' legal framework and the reality of its current practices in dealing with its detained children when in conflict with the law. The Philippines has been a State Party to the UN Convention on the Rights of the Child (UNCRC) since 1990, and enacted the Juvenile Justice and Welfare Act (JJWA) in 2006 (as amended in 2013). Both the UNCRC and the JJWA establish expectations for protecting the rights of their children in conflict with the law. However, despite these legal mechanisms, cases of violations of children's rights while in detention are still being reported. Critics argue that some detention are still "jail-like" condition, with unhygienic and overpopulated rooms, and the absence of programs necessary for child development and rehabilitation (Bochenek, 2016; Cullen, 2016) This thesis aims to identify the barriers to effective policy implementation and explain why these barriers persist.

To meet this objective, firstly, the thesis reports on a desk-based literature review of the international legal instruments and related domestic policies in the Philippines, to identify the specific legal provisions which regulate child detention centres in the Philippines. Secondly, the thesis reports on in-depth interviews with national government officials, local public servants (social workers, and a family court judge), NGOs, and observations from child detention centres within Metro Manila.

The thesis argues that policies are already in place which are sufficient to protect child rights. However, there are significant problems with policy implementation, particularly at the local level. Analysis of the findings suggests that the barriers to effective implementation of the UNCRC and the JJWA in the Philippines include three factors: a) an apparent punitive culture, b) a politicization of the bureaucracy, and c) a larger socio-economic inequality problem of the Philippines.

This thesis concludes with recommendations for positive change, including public education programme to support a change in the general attitude of people towards awareness of the law and rights of children (which may take time), greater scrutiny and accountability in appointments to inhibit the politicization of policy implementation, and a more effective government intervention programs to support children living in poor and dysfunctional

families. With these changes, it is argued the JJWA will become a more effective legal tool in protecting the rights and welfare of the children in detention. Otherwise, the JJWA will just remain on paper – in law, which is ineffective in practice in advancing the rights of children in detention.

Chapter 1

THE PROBLEM OF DETENTION OF CHILDREN IN CONFLICT WITH THE LAW

1.1. Background to the Problem

The starting point of this thesis comes from a personal experience that I had in one of the child detention facilities in the Philippines during my data gathering.¹

In one of the child detention centres in Manila which I visited in the course of researching this thesis, I noticed two children: Ana, a seven-year-old girl, and a four-year-old boy, Buboy (not their real names). Both were lying on the bare floor, while Ana was pacifying little Buboy from crying. They were both confined in a poorly lighted small room, which to my own judgment, was similar to a regular jail – locked behind steel bars. Ana, despite the presence of the social worker and the “house parent” who accompanied me, asked “*Kuya, may dala po ba kayong tinapay? Kanina pa kasi umiiyak ‘tong kapatid ko, gutom po siya.*” (*Kuya, do you have some bread with you? My younger brother is crying because he is hungry.*)

The two staff working in the said centre had informed me that the children were siblings and that they had been staying in the centre for a month already. Ana and Buboy were held in the centre’s custody after being seen “straying and begging for money” on street. The workers mentioned that “it” (detention) was for “safekeeping” as both of their

¹ All reference to the centres and their location are removed to protect the children and staff who invited me to visit their workplace in the course of my interviews. The thesis publication is also embargoed under regulations of the University of Canterbury in consultation with the Chair of the ethics committee.

parents were in jail for reasons that they had not mentioned, and that there were no available relatives that could take care of them.

In the Philippines, many of the children deprived of their liberty, such as Ana and Buboy, are in conditions that are not appropriate to their development.² The Senior Counsel in the Child Rights Division of Human Rights Watch, Michael Bochenek (2016) describes some of these centres as “decrepit, abusive, and demeaning conditions” where children are, “deprived of education, access to meaningful activities, and regular contact with the outside world.” The World Organization Against Torture (OMCT) and Children’s Legal Rights and Development Centre (CLRDC) also observes that in many cases the condition of these child detention centres “often amounts to inhuman and degrading punishment” (2016: 2). For example, in a report submitted to the United Nations Committee Against Torture³ (CAT) held from 18 April – 13 May 2016, the condition of a child detention facility was described like this:

In our last visit March 2016 to the *Yakap Bata Holding Centre* there were 39 children, from 8 to 19 years old.

The centre has three dorms that look like cages. The dorms have no furniture at all, and children sleep directly on the floor. A half blocked window provides the only sunlight and ventilation in the Centre accessible to children. There is strong smell of urine when we enter the centre, due to the little ventilation and poor sanitary conditions. Children never leave that space. There is no patio or another room with sunlight. Food is also considered insufficient and of bad quality. Children have reported also frequent beatings and punching from certain staff members (house parents). None of those allegations have been investigated. Some of the conditions in this child detention centre are:

- No bed NOR mattress NOR mat to sleep on
- No sheets, pillow or blanket
- Spoon and fork are prohibited

² As mentioned in advocacy brochure of the campaign for a Global Study on Children Deprived of Liberty (GSCDL), a movement organized by the Defence for Children International and other NGOs at the Palais des Nations in Geneva on 13 March 2014.

³ A report for the Committee’s examination of the Third Periodic Report of the Philippines regarding the ill-treatment and torture of children deprived of liberty in the Philippines.

- The floor is filthy, and garbage is accumulated between the bars and the wall on one side of the cell
- The cells are poorly lighted, and only a narrow 30 cm tall and 1.20m wide opening allowing natural light in
- In the corner of cell A that is adjacent to cell B, there is a tiny space, with no door, that contains a tiny toilet with no lid or mechanism to flush. There is rusty faucet next to the toilet.
- On the floor in front of this ‘comfort room’ is an old dishevelled and damp rag. Sitting directly on the ledge to this tiny and filthy ‘comfort room’ is a small and dirt stained piece of soap, and the one plastic cup to be shared by all the children
- The children drink the water that comes out of the rusty faucet right next to the toilet
- They share a piece of toothbrush and a piece of soap, which contributes to the proliferation of skin diseases
- There are no towels and children must wash their own clothes and hang things to dry wherever possible such as through the cell bars and on strings hanging across the cell
- Cells are frequently overcrowded

The Philippines is one of the first countries who ratified the United Nations Convention on the Rights of the Child (UNCRC), and is a signatory of several international juvenile justice based agreements.⁴ While the use of detention is not explicitly prohibited, these international treaties and agreements have standards and safeguards for children who are deprived of their liberty (Mendez, 2015). For instance, the UNCRC contains provisions that promote and protect the welfare of children in conflict with the law, particularly Article 37 (which contains guarantees of limitations for the use of detention for children), Article 39 (which emphasizes the duty of authorities to rehabilitate and reintegrate children after detention), and Article 40 (which contains specific provisions for the treatment of children deprived of their liberty).

⁴ The Standard Minimum Rules for the Administration of Juvenile Justice, The Guidelines for the Prevention of Juvenile Delinquency, The Standard Minimum Rules for Non-Custodial Sentences, and the Rules for the Protection of Juveniles Deprived of their Liberty.

The UNCRC calls on state parties to ensure that children in conflict with the law are to be treated with dignity and respect, in recognition of their level of development, and in a manner where reintegration and rehabilitation are promoted rather than using repression and punitive sanctions (Defence for Children International, 2010). However, it was not until 2006 (since its ratification on 21 August 1990), that a comprehensive juvenile justice and welfare system law was enacted in the Philippines. This law is the Juvenile Justice and Welfare Act (JJWA).⁵ Under the JJWA, despite commission of an offence, a child is to be given protection of his/her rights – the rights that the child is entitled to are championed, not only in international human rights instruments (particularly the UNCRC) but also by the ideals of the 1987 Philippine Constitution (see Chapter 3 and 6 for further discussion). For example, the JJWA highlights that detention of children should only be used as a measure of last resort and for the shortest appropriate period of time (Section 36), and if it is in the best interest of the child (Section 20). Under the JJWA, the age of criminal liability was increased in the Philippines from nine years of age to fifteen years of age, and the emphasis in the justice system changed towards a “restorative rather than punitive system” for children (Section 2f). As a law that promotes restorative justice the JJWA also, “...seeks to obtain reparation for the victim; reconciliation of the offender, the offended and the community; and the reassurance to the offender that he/she can be reintegrated into society”, and prohibits the use of any “punitive measures that will be prejudicial and detrimental to the psychological, emotional, social, spiritual, moral and physical health and well-being of the child” (Section 4q and Section 61). Hence, the JJWA seeks to rehabilitate the child and not to punish, with the aim of reintegrating him/her into society.

With this, the JJWA, through its Implementing Rules and Regulations⁶ provides specific guidelines, which include requiring provinces and highly-urbanized cities (herein referred to as local governments) to establish detention centres that will ‘temporarily’ shelter children in conflict with the law known as *Bahay Pag-asa* (Houses of Hope). Although admittance of a child to a *Bahay Pag-asa* will technically deprive that child of their liberty, the intent of those advocating these Houses of Hope is to provide a “child-caring” centre, albeit temporary, for children in conflict with the law “where they are helped to appreciate their worth

⁵ The first enactment was in 2006 (Republic Act 9344) and later it was amended in 2013 (Republic 10630).

⁶ Juvenile Justice and Welfare Council Resolution No. 2, Series of 2014 (as amended)

and rebuild their lives.”⁷ The intent of the legislators was that the old conditions of child detention centres should be transformed from jail-like conditions into *Bahay Pag-asa* institutions (which should be “home-like” conditions).⁸ Aside from this physical structure requirement, the law also requires that the services and programs provided in every *Bahay Pag-asa* must fit to the individual needs of the child in ways necessary for his/her rehabilitation (Section 20).

1.2. Statement of the Problem

Despite the existence of these child rights-based legal mechanisms, as discussed above, researchers and child advocacy groups continue to express concern at the conditions of child detention centres in the Philippines. Despite enacting the JJWA in 2006, it still appears that such legislation is not being effectively implemented. These conditions result in the violation of rights of the children in detention.

This Master’s thesis project then asks why poor and inadequate conditions continue in child detention centres despite the decade long existence of the JJWA, and the commitment of the Philippines to the UNCRC. It appears that in the Philippines, there is a discrepancy between the laws and regulations that were designed to safeguard children’s rights and the prevailing reality when they are put into practice. This socio-legal phenomenon is called a policy ‘implementation gap’, a term defined in this thesis as the “difference between what solutions have been adopted in legal documents and their actual implementation in practice” (Centre for International Private Enterprise and Global Integrity 2012; 1; Van Meter and Van Horn 1975: 449).

Several reports by child advocacy organizations have mentioned the existence of the policy implementation gap between the intent of the current Philippine legal instruments concerning children in conflict with the law and the reality (Coalition to Stop Child Detention through Restorative Justice, 2009; Committee on the Rights of the Child, 2009; Save the Children, 2004; Caparas, 2003). For example, in the recent report by the World Organization

⁷ Part VI in the DSWD Memorandum Circular No. 18, Series 2015.

⁸ Unpublished copy of the transcription of deliberation of the Technical Working Group (TWG) for the amendment of the then Republic Act 9344. The TWG was composed of the Philippine House of Representatives Committee on Justice and Human Rights with Committees on Constitutional Amendments, Revision of Codes and Laws; Youth, Women and Family Relations; and Finance. 9 March 2011.

Against Torture and the Children's Legal Rights and Development Centre (2015: 2)⁹ the authors highlighted that in the Philippines, children held in detention in appalling conditions is still an everyday reality: “despite some improvements in legislation [in the Philippines], local authorities dealing with children are not familiar with these laws and do not implement them.”

However, in those reports, there is no thorough explanation of how and why these problems of policy implementation occur. Hence the need for a more comprehensive analysis of implementation in the context of legislation for the protection of children in conflict with the law. The research vacuum, leads me to pose this **research question**:

Despite the Philippines' legislation for children in conflict with the law through the enactment of the JJWA, **why do these problems of policy implementation still persist?**

1.3. Research Goals

This thesis project aims to answer this research question in the following way:

1. Identify the policy implementation gaps by enumerating and explaining why specific provisions of the UNCRC and JJWA are not effectively implemented in the Philippines.
2. Explore the barriers to effective implementation of the JJWA.
3. Explain why these barriers persist within the Philippine context

⁹ For their report to the UN Committee Against Torture in relation to its examination of the Third Periodic Report of the Philippines regarding the ill-treatment of children deprived of liberty in the Philippines.

1.4. Significance of the Study

The situation of detained children in the Philippines is an issue that deserves attention. The non-effective implementation of the JJWA means that children are suffering a violation of their fundamental rights as inscribed not just in the JJWA but also in the ideals of the 1987 Philippine Constitution and international human rights instruments. In addition, many of these children living in conditions of detention have not committed serious offences (World Organization Against Torture and Children's Rights and Development Centre, 2016). The result of the Universalia Study (2015) regarding the status of the implementation of the JJWA in the Philippines shows that the majority of the offences committed by children are caused by poverty. Others have committed no offences at all, such as street children who are just detained in such conditions under the government's justification of "safekeeping" measures (Cullen, 2015).

It is both thought-provoking and important to study and analyse the sources of the policy implementation gap. The creation of the Philippines' Juvenile Justice and Welfare Act in 2006 (R.A. 9344) and its succeeding amendments in 2013 (R.A. 10630) for example, is already a step forward towards securing the protection of the rights of children who are in trouble with the law. However, the Centre for International Private Enterprise and Global Integrity (2013) argues that enacting a law is only a part of the whole puzzle; the other part is making sure that it is enforced as it should be. When written legal measures for the protection of children in conflict with the law are not effectively implemented, it not only means that some of their rights are violated, but it also manifests problematic systems (political, economic, social, and cultural) that might be barriers to effective policy implementation (Centre for International Private Enterprise and Global Integrity, 2013).

By studying the problem of the policy implementation gap, probable causes will be identified and solutions for its effective implementation will be offered. In conducting this study, I also hope that through this process, significant and meaningful insights will be generated that would be a tool of reflection for policy makers in coming up with workable solutions that would more effectively protect the rights of children in detention.

1.5. Definition of Terms

In the following thesis I will use a number of terms which have a specific meaning in the literature of children's rights and which I will first define here.

Best Interest of the Child – refers here to the “totality of the circumstances and conditions that are most congenial to the survival, protection and feelings of security of the child and most encouraging to the child's physical, psychological and emotional development”. Acting in the best interests of the child, also means choosing “the least detrimental available alternative for safeguarding the growth and development of the child”.¹⁰

Child – the age at which a person is regarded as an adult or can assume responsibility for actions varies widely across countries and within legislation. For the purpose of this study the term child is drawn from Section 4(c) of the Juvenile Justice and Welfare Act of the Philippines which refers to a person under the age of eighteen years.

Children in Conflict with the Law – in this thesis, this term refers to those children who are below eighteen years of age who are, “alleged as, accused of, or adjudged as, having committed an offence under Philippines law”.¹¹

Detention – for the purpose of this study, this term is operationally defined as a situation where a child is put in a poor and inadequate facility for children in conflict with the law.

Deprivation of Liberty – refers here to any “form of detention or imprisonment, or to the placement of a child in conflict with the law in a public or private custodial setting, from which the child in conflict with the law is not permitted to leave at will by order of any judicial or administrative authority”.¹²

Bahay Pag-asa (House of Hope) – is the Philippine name for a “24-hour child-caring institution established, funded and managed by local government units (LGUs), or by accredited non-government organizations (NGOs). These Houses of Hope provide short-term residential care for children in conflict with the law who are above fifteen but below eighteen years of age, and who are awaiting court disposition of their cases or transfer to other agencies or jurisdiction.”¹³

¹⁰ Section 4b, Republic Act 9344.

¹¹ Section 4e, Republic Act 9344.

¹² Section 4h, Republic Act 9344.

¹³ Section 4s, Republic Act 9344 (as amended).

1.6. Structure of the Thesis

This opening chapter has explained the background of the problem of this thesis project and at the same time emphasized the need to study the policy implementation gap that can be observed when children are held in detention in poor and inadequate conditions. In this chapter, I outlined the main objective of the thesis, which is to determine the barriers to effective implementation of the JJWA in the Philippines, and to explore explanations of why these barriers persist.

In order for me to answer my research question, Chapter Two will review and evaluate the key international treaties and other related child-rights based instruments that relate to the rights of the child in the context of detention. By doing so, it will provide an important springboard for understanding the dynamics between existing legislation and how these laws are implemented. Furthermore, this chapter will also examine how different State Parties respond to these international instruments and the political, social, and legal realities of policy implementation on the ground. Thus, this part of the thesis will explore the problem of detention of children at the international level before turning to understand the issues in the Philippines.

Chapter Three offers a more case-specific discussion about how the Philippines responds to its commitments to international human rights instruments. This chapter will also discuss provisions of the domestic laws of the Philippines in protecting the rights and welfare of children in detention.

In Chapter Four, I also outline the methods that will be used to conduct this research, which will include a review of (1) secondary literature, (2) international laws, (3) the Philippines' domestic legal framework, (4) interviews with both local actors and key non-government institutions, and (5) field observations of four child detention centres in the Philippines.

Chapter Five presents the findings of the data collected from ten in-depth interviews with public officials and child advocacy groups, and field observations/visits to four child detention facilities in Metro Manila.

In Chapter Six, I analyse my research findings and offer some explanations for the causes of the apparent ineffective policy implementation of JJWA in the Philippines. As noted in the opening chapter, several reports reveal that there is a wide implementation gap in the case of the Philippines' policies and legislation against illegal detention of its CICL, however, none of these studies gives a thorough explanation about the reasons or factors that contribute to the ongoing detention of children in poor and inadequate conditions. The aim of this chapter is to fill that research gap by methodically investigating specific provisions of related legislation that are not effectively implemented. A framework analysis will be used through the cultural, political, and socio-economic lenses of the Philippines.

The final chapter offers a summing up the key findings of this thesis and re-emphasizes its value, and why a study about the operation of child protection laws on the ground is important. Moreover, this chapter will also provide suggestions for further research, given the limited scope of this master's thesis project.

1.7. Summary

The study of the implementation gap between the JJWA and the contextual reality when it is applied on the ground is both timely and important in the Philippines. Furthermore, this thesis fills a significant gap in the policy implementation literature of the Philippines, particularly with regards to matters relating to juvenile justice, and child rights protection. It is hoped that this thesis can provide meaningful insights into the problem of ongoing detention of children in poor and inadequate conditions of centres in the Philippines.

Chapter 2 now turns to review the international treaties and child-rights based instruments that relate to children deprived of their liberty, particularly the rights of children in conflict with the law while in detention. This discussion will provide understanding of the legal underpinnings of these international instruments. It will also include a general discussion of how some State Parties and signatories respond to these international child rights-based instruments.

Chapter 2

Detention of Children: Understanding the International Norms and Standards to Protect Children in Conflict with the Law

2.1. Introduction

In order to facilitate a better understanding of the problems of implementing the Philippines' legal framework for detention of children, this chapter first provides a review of the current international treaties that inform nations about the rights of children in detention as a result of conflict with the law. This chapter will also examine the current practices of other nations. Discussion is divided into three major sections: first, discussion examines the current international legal framework (focusing on the UN Convention on the Rights of the Child), which sets standards for the use of detention for children in conflict with the law; secondly, current international trends, practices, and challenges in treating children in conflict with the law are reviewed in the context of detention; and finally, there is a summary of the discussion about whether these international instruments and international practices are sufficient to secure the rights of children in conflict with the law and to prevent the illegal use of detention and related abuses of children.

2.2. The international legal framework for the detention of children in conflict with the law

From a historical perspective, the explicit consideration of children in conflict with the law is relatively new. Although the concept of recognizing children as rights holders has existed since 1924¹⁴ (known as the Geneva Declaration, followed by the 1959 Declaration of the Rights of the Child), specific rights for children in conflict with the law were not present during that period. Instead the two early Declarations for Children's Rights were purely a list of "statement of principles, with no legally binding force" (Mower, 1997).

¹⁴ The movement for the 1924 Declaration of the Rights of the Child was temporarily ended after the collapse of the League of Nations. It was succeeded by the same principles in 1959.

International focus on the rights of children in conflict with the law in relation to detention can be said to have started with the adoption of the International Covenant on Civil and Political Rights (ICCPR) in 1966, wherein specific provisions for the treatment of children in conflict with the law were enshrined in an international agreement (Van Bueren, 1995). Article 10 of the ICCPR stipulates:

- 2 (b) – [a]ccused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
- 3 – [...] [j]uvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Van Bueren (1995) points out, although these provisions were worthwhile in the early administration of children in conflict with the law, they only provided protection in relation to certain elements, i.e., separation of accused children from adults, consideration of the child's age during trial, and giving priority to the promotion of rehabilitation. Thus, these early protections were piecemeal, and were not really comprehensive. Many of today's rights of children in conflict with the law are not found in the ICCPR. Only when states were starting to make their own domestic justice system for children did they begin to acknowledge that the ICCPR was not comprehensive enough to be a "coherent international framework" that would serve as a guide for states in creating their own respective legal measures in dealing with children in conflict with the law (Van Bueren, 1995). Thus, in 1985, the UN General Assembly adopted the first international instrument created specifically for children in conflict with the law, that is, the UN Standard Minimum Rules for the Administration of Juvenile Justice, otherwise known as the Beijing Rules. This was followed by the UN Convention on the Rights of the Child and the UN Rules for the Protection of Juveniles Deprived of their Liberty (the JDL Rules) in 1989 and 1990, respectively.

The following section will primarily discuss the United Nations Convention on the Rights of the Child and with reference to other child-specific international instruments, namely the UN Rules for the Protection of Juveniles Deprived of their Liberty (1990 JDL Rules), and the UN Standard Minimum Rules for the Administration of Juvenile Justice (1985 Beijing Rules). Despite the focus of this chapter on child-specific international instruments, it is also

important to draw our attention to other general international human rights instruments because although not directed at children, they still apply to children.

2.2.1. The UN Convention on the Rights of the Child (UNCRC)

2.2.1.1. Right to liberty of a child in the context of juvenile justice systems

The right to liberty is one of the most widely recognized and perhaps one of the oldest rights in the entire human rights history. In fact, this right was said to have existed as early as in 1215 in the British Magna Carta Libertatum (Symonides, 2000). Nevertheless, detention, imprisonment and other forms of restraint of liberty have also been widely exercised in the past (Liefwaard, 2008). Since 1215, the right to liberty has been regarded as a right that is not absolute, i.e., it has limitations. The International Human Rights Law generally provides for a number of legal requirements that seek to protect an individual's fundamental right to liberty. Moreover, through the UNCRC, children are also given a special kind of protection in terms of securing their rights. Unfortunately, it has been frequently reported that individuals, including children, have been detained with no clear reasons, without any lawful basis, arbitrarily, and for longer periods of time. The UNCRC Committee's General Comment in 2007, for instance, pointed out that children in several nations "languish in pre-trial detention for months or even years" (CRC/C/GC/10, para. 80).

Article 37 of the UNCRC is the primary international standard that governs the protection of children's right to liberty. It contains "the leading principles for the use of deprivation of liberty, the procedural right of every child deprived of liberty, and provisions concerning the treatment of and conditions for children deprived of their liberty" (CRC/C/GC/10, para. 78). Article 37 of the UNCRC states:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the

law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 37 is based on Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 9 of the International Covenant on Civil and Political Rights (ICCPR). Article 9 states that “[e]veryone (every person in ICCPR) has the right to life, liberty and security of person.” (Liefwaard, 2008). Seen in this light, it seems that the UNCRC is a confirmation of the applicability of both the UDHR and ICCPR in protecting the right to liberty of children. Discussion in this chapter seeks to identify whether Article 37 of the UNCRC is applicable to children in conflict with the law, and if so, how does it apply to other forms of deprivation of liberty?

Before answering these questions, let us make it clear first as to what constitutes deprivation of liberty. To build on the general definition of deprivation of liberty I offered in Chapter One, I turn to Rule 11 of the UN Rules for the Protection of Juveniles Deprived of their Liberty (1990). Under that Rule “[t]he deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority”. According to Hamilton, Anderson, Barnes, and Dorling (2011), deprivation of liberty of children includes the following:

- controlling immigration and cross-border movement of individuals as a result of conflict;
- containing children deemed to pose a security threat, such as captured children used by armed forces or armed groups;
- ensuring treatment or containment of children with mental health conditions;

- containing children engaged in drug or alcohol misuse;
- providing protection to children who are at risk of abuse and exploitation or who might otherwise be living and working on the streets; and
- addressing criminal offending by children under the age of criminal responsibility and children regarded as anti-social.

In addition, there is also a deprivation of liberty when one is strictly restrained from his/her “freedom to transfer from one place to another, e.g. house arrest”¹⁵, or constraining an individual to a certain “geographical area, rather than a closed facility”¹⁶ (as cited in Hamilton et al., 2011). But under current international law, to qualify as restraint of liberty, “it must reach a certain level of physical constraint” (as cited in Hamilton et al., 2011). However, Hamilton et al. (2011) contend that, despite these definitions, it is still not sufficiently clear what constitutes a substantial restraint of right to liberty, “as the circumstances of each individual case must be taken into account”. For instance, in the case of *Amuur v. France* (1996), the European Court of Human Rights maintained that in determining whether an individual has been deprived of his or her liberty, an individual’s situation has to be taken into consideration under a range of qualifications, like the nature, length, results and the way the measure in question is executed. Nevertheless, despite its gaps due to definitional clarity, using the broad term “deprivation of liberty” presents both positive and negative consequences. On the one hand, such broadness allows the definition to be flexible to respond to State Parties’ political, cultural and socio-economic context, while on the other hand, it also seemingly permits State Parties to use the broadness of the definition to their own advantage through a self-serving interpretation that could justify its acts, which could be considered as beyond the tenets of the international standards.

It has to be noted, however, that the focus of this thesis is on the deprivation of liberty of children in the context of the criminal justice system, that is, in its narrowest sense, relating only to the freedom from unlawful, arbitrary arrest and forceful detention of a child who has been arrested, accused or sentenced to have violated the law, at a particular confined setting, such as jail, police detention facility, or in any enclosed areas where the freedom to move is restricted (herein referred to as Children in Conflict with the Law or CICL). Although other forms of deprivation of liberty are beyond the scope of this thesis, it is still necessary to discuss

¹⁵ Cyprus v. Turkey case, 1976

¹⁶ Guzzardi v. Italy case, 1976

them in order to determine the sufficiency of the current international instruments in protecting children in the world, regardless of whatever context that results in the deprivation of their liberty.

Liefwaard (2008) argues that there is no doubt that the provisions in Article 37 of the UNCRC are applicable to children in conflict with the law. However, the question of whether it also covers other forms of deprivation of liberty is still a subject of legal and academic discourse. The language in the second sentence of Article 37 (b) which states: “[...] arrest, detention or imprisonment [...]” seems to refer only to deprivation of liberty in the context of the criminal justice system. During the second reading in the formulation of the UNCRC, the second sentence of this provision was one of the contentious topics discussed by states (Van Bueren, 1995; Schabas and Sax, 2006; as cited in Liefwaard 2008). In the original proposal, the draft of Article 37 had a much higher standard of protection by providing that “all deprivation of liberty should only be for the shortest possible period of time” (UN Doc. E/CN.4/1989/WG.1/WP.67/Rev.1 as cited in Van Bueren, 1995). However, several nations at that time were reluctant to limit their freedom of choice concerning other forms of deprivation of liberty other than in the context of criminal justice system (Van Bueren, 1995: 209). It was the delegation from the then Soviet Union that proposed the usage of “arrest, detention or imprisonment” instead of “deprivation of liberty” in the second sentence of Article 37 (b) of the UNCRC. This suggestion was favoured by most of the participating states (Detrick and Cantwell, 1992) and was ultimately adopted. However, this is what Van Bueren calls a “weaker standard”, since it would only seemingly cover deprivation of liberty in the context of the criminal justice systems. With the wide acceptance of the “weaker standard” in the UNCRC, Van Bueren (1995: 209) deduces that “[s]tates parties to the Convention on the Rights of the Child are therefore under a duty only to impose arrest, imprisonment, and detention as a measure of last resort rather than all forms of deprivation of liberty”.

Most commentators argue that the historical intent of Article 37 (b) was to cover all forms of deprivation of liberty, except the “measure of last resort” and the “shortest appropriate period of time” requirements (Liefwaard, 2008). However, Liefwaard adds that these provisions contentiously apply only to cases of children whose right to liberty has been deprived due to violation of law or in the context of the criminal justice system. The alleged exclusivist nature of the second sentence of Article 37 of the UNCRC was accordingly due to the concessions

resulting from the substantial ideas of the International Human Rights Standards for children, juvenile justice, and deprivation of liberty at that period of time (Schabas and Sax, 2006). Nevertheless, Schabas and Sax believe that most States had seemingly changed their attitude towards limiting their discretion over other forms of deprivation of liberty (other than in the context of justice system for children), when the UN Rules for the Protection of Juveniles Deprived of their Liberty (JDL Rules) was created in 1990, one year after the adoption of the UNCRC.

The JDL Rules use the much broader wording of “deprivation of liberty” rather than the language of “arrest, detention or imprisonment” in the UNCRC, according to Van Bueren (1995). The JDL Rules denote a contemporary deliberate choice for an all-encompassing international instrument for the deprivation of liberty for children, which as Schabas and Sax put it, the global community of nations would have “overcome the traditional narrow perception of deprivation of liberty as a criminal justice issue only” (p. 84).

Despite the specific points of contention listed above, the intent of the UNCRC must be interpreted as a whole and not just on a certain part of it, as one provision may be qualified by other provisions. Agpalo (2009) contends as follows:

The particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole. Where a particular word or phrase in a statement is ambiguous in itself or is equally susceptible of various meanings, its true meaning may be clear and specific by considering the company in which it is found or with which it is associated.

In this case, the wording “arrest, detention or imprisonment” stated in the second sentence of Article 37 (b) of the UNCRC must be interpreted in relation to its first sentence, which technically refers to all forms of deprivation of liberty. Likewise, the UNCRC was created to give protection to all children, without any kind of distinction; thus, it can be persuasively argued that the second sentence of the UNCRC’s Article 37 (b) must include children who have been deprived of their liberty for reasons other than in the context of juvenile justice. Moreover, to disregard other forms of deprivation of liberty in the application of the second sentence of Article 37 (b) of the UNCRC would not be compatible with the object and purpose of overall UNCRC standards on deprivation of liberty, that is, from Article 37 (b) to

(d) (Schabas and Sax, 2006). Surprisingly, the United Nations Committee on the Rights of the Child had made no clear statement regarding this matter, except that it has explicitly noted in its General Guidelines for Periodic Reports that the broad definition of deprivation of liberty in the JDL Rules should be used in defining the terms used under Article 37 (b) of the UNCRC (UN Committee on the Rights of the Child, 1996: para. 138). The JDL Rules' broad definition of deprivation of liberty covers the placement of children in all kinds of different facilities, such as homes for child offenders, residential facilities for victims of drug abuse, detention centres, closed or semi-open facilities for children in need of supervision or protection, and detention centres for immigrants (Defence for Children International, 1990: 15). In that sense, it is safe to conclude then that the Committee is in favour of bringing other forms of deprivation of liberty within the scope of the second sentence of Article 37 (b) of the UNCRC.

Despite the contested scope of Article 37 (b) however, it is important to note that children in conflict with the law, which is the main subject of this thesis, clearly is the core within Article 37 (b).

2.2.1.2. Legal requirements concerning the deprivation of liberty of children in conflict with the law

International Human Rights Law sets out how limitations on the right to liberty are to be construed. In the case of children, it is Article 37 of the UN Convention on the Rights of the Child that specifically deals with the protection of their rights in this regard. Specifically, Article 37 (b) of the UNCRC provides the necessary requirements on when and how a child can be validly deprived of his or her right to liberty. The first sentence provides that “[n]o child shall be deprived of his or her liberty unlawfully or arbitrarily”; the second sentence stipulates that, “[t]he arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time” (UN General Assembly, 1990). This sub-section concentrates on the legal requirements concerning the deprivation of liberty of children in conflict with the law: (a) prohibition of unlawful or arbitrary deprivation of liberty, and (b) the rule that the deprivation of liberty must be used only as a measure of last resort and for the shortest appropriate period of time.

a. Lawfulness and non-arbitrariness

The first sentence of Article 37 (b) indicates that deprivation of liberty 1) must be lawful and 2) must not be arbitrary. The second sentence on the other hand, implies that the right to liberty of a child is something that is not absolute. Both the first and second sentences of Article 37 (b) of the UNCRC suggest that a child might be deprived of his or her right to liberty and that such deprivation must be in accordance with the law. This requirement can be found in other international human rights instruments, for example, Article 9 (1) of the ICCPR, which states,

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

The UN Human Rights Committee has stated in its General Comment No. 8 that the proviso stipulated in Article 9 (1) of the ICCPR covers all types of deprivation of liberty, whether in criminal cases or in other cases, such as, for example, mental illness, vagrancy, drug addiction, educational purposes, and immigration control (CRC/C/GC/8). At the time when Article 9 of the ICCPR was formulated, there was wide support for limiting the right to liberty of an individual in prescribed circumstances except on when and how it could be restrained.¹⁷ As a result, the State Parties to the ICCPR are put under a duty to define through, their domestic laws, what constitutes lawful restraint of freedom of its citizens. Article 37 (b) of the UNCRC is similar to Article 9 (1) of the ICCPR in that it does not provide a list of legal grounds for depriving the liberty of a child. Instead, its broad provision enables State Parties to outline through their own domestic law, when and how a child may be deprived of his liberty. Hence, it would be a violation of the lawfulness requirement if a child is deprived of his or her liberty on the grounds that are not set out in domestic law (Nowak, 2005).

Schabas and Sax (2006: 77) contend that “any deprivation of liberty necessitates legislation in order to comply with the lawfulness requirement.” Nowak continues that, in order to meet the “lawfulness” requirement, it is necessary that states must not only provide the

¹⁷ UN Doc. A/2929, Chapter VI, para. 27.

grounds (*the why*) for the deprivation of liberty but also the procedures (*the how*) guiding such deprivation of liberty. As Nowak (2005: 224) puts it,

A restriction on liberty of person is permissible only when this takes place in enforcement of law that provides for such interference with adequate clarity and regulates the procedure to be observed.

Although State Parties to the UNCRC are under a duty to clearly define in their domestic laws the grounds and procedures for limiting the right to liberty of children, the requirement of lawfulness, according to the ECtHR in the case of *Plesó v. Hungary* (2013), is not met merely by compliance with the relevant domestic law: “domestic law must itself be in conformity with the Convention [UNCRC], including the general principles expressed or implied in it.”

Aside from the requirement that deprivation of liberty must be set out in law, **arbitrariness** is also prohibited under Article 37 (b) of the UNCRC. Compared to the lawfulness requirement, Joseph, Schultz and Castan (2004) maintain that the prohibition of arbitrary deprivation of liberty has a much wider coverage. As defined by the United Nations Human Rights Committee (No. 560/1993, para. 5.8) in the *A v. Australia* case, arbitrariness “includes elements of inappropriateness, injustice or lack of predictability.” This conveys that, according to Liefwaard (2008), any arrest resulting in deprivation of liberty “must not only be lawful but reasonable and necessary in all circumstances”. On the one hand, reasonableness is contingent on aspects akin to appropriateness, justice, and predictability; on the other hand, necessity depends upon the circumstances of the individual case, for instance, the possibility of the accused to abscond before the law should he/she not be detained, or obstruct the evidence at hand, or commit another offense (Liefwaard, 2008).

Hamilton, Anderson, Barnes, and Dorling (2011) consequently add that in the case of the child, deprivation of liberty is only reasonable and necessary when it meets the child-specific additional requirements in Article 37 (b) of the UNCRC, i.e. it is used as a matter of last resort and for the shortest appropriate period of time. If State Parties continue to deprive a child of his or her liberty beyond which it can provide justification, then such is deemed to be considered as arbitrary as it is no longer seen as necessary and proportionate, and hence, unlawful (*A v. Australia* case, 1997).

b. Rule of last resort and for the shortest appropriate period of time

Aside from the lawfulness and non-arbitrariness requirements, the second sentence of Article 37 (b) of the UNCRC contains additional requirements for a valid deprivation of liberty of a child. The second sentence of Article 37 (b) of the UNCRC further stipulates that the “arrest, detention or imprisonment of a child ... shall be used only as a measure of last resort and for the shortest appropriate period of time.”

The additional two requirements – that is, the rule of last resort and the rule of shortest appropriate period of time – are said to be child-specific requirements as these are not afforded to adults who are deprived of their liberty. In the case of the child, these apply to both pre-trial and post-trial detention. However, for adults, these rules apply only during pre-trial detention (Van Bueren, 1995). These rules are based on the 1985 UN Standard Minimum Rules for the Administration of Juvenile Justice, otherwise known as the Beijing Rules, specifically Rules 13, 17 and 19 (Detrick, 1999). Although the rule of last resort can also be found in the ICCPR and in the UN Standard Minimum Rules for the Treatment of Prisoners, the rule of shortest appropriate period of time is not mentioned in any other international human rights standards (Liefwaard, 2008).

The **rule of last resort** according to Liefwaard (2008) calls for the use of acceptable alternatives appropriate for the child, rather than immediately curtailing his or her fundamental right to liberty. This rule is based on the assumption that deprivation of liberty controls the very fundamental freedom of an individual, which should be restrained only when found to be necessary; however, such should always be the last option in the case of children (Liefwaard, 2008). As Thomas Hammarberg (2006), Commissioner for Human Rights of the Council of Europe, in his speech at the Conference of the Prosecutors General of Europe states, “[t]he only reason for locking up children is that there is no alternative to handle a serious and immediate risk to others.”

In essence, this rule of last resort shares the same aspect with the lawfulness and non-arbitrariness requirements. Like the first two requirements, the duty of detailing the specificity of the rule of last resort (and also the rule of shortest appropriate period of time) is entrusted to

State Parties, particularly their respective lawmakers and enforcement authorities. Lawmakers in each State are empowered to establish through legislation on how this rule will be enforced domestically. If the legal grounds and procedures for restraining a child's liberty are clearly defined in a domestic law, Liefwaard (2008) notes that it would show that the use of deprivation of liberty is limited, and alternatives to it are more likely to be offered.

Article 9 (3) of the ICCPR is also in similar terms to the UNCRC regarding the rule of last resort although it only applies to pre-trial detention. It states that “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody”. It shall be used only as an exception if an unavoidable risk is foreseen and “as short as possible” (CRC/C/GC/8). In addition, the same principle is also enshrined in Rule 13 (1) of the Beijing Rules and Rule 17 of the JDL Rules. The latter suggests that pre-trial detention should be “avoided to the extent possible” and “limited to exceptional circumstances” (Van Bueren, 1995: 210). When pre-trial detention is found to be necessary, cases should be given the “highest priority to the most expeditious processing” to ensure the shortest period possible. Pre-trial detention should be used only “for essential reasons, such as danger of suppression of evidence, repetition of the offence and absconding” (Nowak, 2005 as cited in Liefwaard, 2008). In other words, the principle of a “measure of last resort” calls for the use of acceptable alternatives appropriate for the child, rather than curtailing the fundamental right to liberty of an arrested, accused or convicted child (Liefwaard, 2008:189).

Furthermore, based on the official commentary attached to the Beijing Rules, the above stated limitations implicitly urge states to minimize the use of pre-trial detention by devising “new and innovative measures” (Commentary to Beijing Rule 13, para. 1, as cited in Van Bueren, 1995: 210). Consequently, the Committee of the UNCRC stipulates that State Parties should “take adequate legislative and other measures to reduce the use of pre-trial detention” (CRC/C/GC/10, para. 80).

The last essential requirement for a valid deprivation of liberty of a child is that any arrest, detention or imprisonment must be done for the **shortest appropriate period of time**. This requirement is notable in that the aspect of duration of deprivation of liberty does not exist in any other international human rights standard. It is therefore an additional safeguard for children. Liefwaard (2008: 196) mentions that this rule in Article 37 (b) of the UNCRC “goes

beyond the scope of Article 9 (3) of the ICCPR” because the latter covers only pre-trial detention, while the former also includes the cases that have been judicially adjudicated already.

Van Bueren (1995: 214) posits that the crux of the rule of “shortest appropriate period of time” is that the duration of arrest, detention or imprisonment of a child (if found to be necessary) must substantially correspond with the child’s best interests, as stated in Article 3 (1) of the UNCRC. Moreover, as stipulated in Rule 2 of the JDL Rules, the duration to which the child will be deprived of his or her liberty “should be determined by the judicial authority, without precluding the possibility of his or her early release”.

As with the other requirements, many legal scholars and commentators argue that this duration requirement suffers from ambiguity as to its meaning. Unfortunately, the UNCRC fails to provide exact guidelines on the duration (or at least specific restrictions) of period. Liefwaard (2008: 196) justifies that “[i]t is not surprising that it has not done so, because that would have implied an enormous (and most likely unacceptable) limitation of state sovereignty”. However, despite the UNCRC’s lack of clarity on this matter, one could still resort to other related and more indirect international human rights provisions, in order to decipher the meaning of this duration principle. In fact, even the UNCRC Committee in its guidelines in General Comment No. 10, seemingly opted not to adopt explicit interpretation. Instead, it stipulates only that the determination of the “appropriateness” of the duration of detention of a child shall be determined by a competent judicial body. Liefwaard constructs that this is because the phrase implies a “tailor-made approach”, meaning that the ‘shortest appropriate period of time’ is to be assessed “by a competent, independent and impartial authority or a judicial body” on a case-by-case basis (CRC/C/GC/10par. 81).

2.2.1.3. Quality of treatment for detained children in conflict with the law

a. Condition of detention facilities

The United Nations Convention on the Rights of the Child (UNCRC) makes it clear that criminal justice systems owe a much higher standard of care to children due to their vulnerability. Children, who have been deprived of their liberty, whenever found to be necessary, must be treated with “humanity and respect for the inherent dignity of human person, and in a manner which takes into account the needs of persons of his or her age”. This principle is set forth in the first sentence of Article 37 (c) of the UNCRC which states that:

Every child deprived of liberty shall be treated with humanity and respect for inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.

Liefaard (2008) calls this provision the “core” value concerning the quality of treatment of children deprived of liberty. The UN Rules for the Protection of Juveniles Deprived of their Liberty (JDL Rules) further recommend that a safe environment for children must be provided with a sufficient number of equipped personnel. Detained children must also have access to their family, to medical care, and to legal representation. Rule 30 of the JDL Rules recommends that the number of children detained in closed detention facilities should be sufficiently small to enable individualized treatment, and the facilities should be integrated into the “social, economic and cultural environment of the community”. Moreover, necessary programmes and services, such as education, vocational training, and work, must also be afforded for the continuous development of the child. The aim of this international standard is to actually help the child be reintegrated back to the community as a useful citizen of the country (O’Donnell, 1988: 22-23).

b. Separation from adults and the right to maintain contact with family

Along with the principle of “humane treatment” for children, according to Article 37 (c) of the UNCRC, whenever detention is found to be necessary, is the idea that children should be separated from adults unless it is found to be in the child’s best interest not to do so. The concern over the separation of children from adults who are in detention often focuses on the

risk of abuse facilitated by such direct contact. Moreover, the rationale for separate detention, as Van Bueren (1995: 220) puts it, “is not only for children’s protection but also to ensure they will be cared for in an environment designed to meet their special physical, social, and psychological needs”.

The UNCRC also explicitly highlights the aspect of the right of the detained child to maintain contact with his or her family. The two concepts are consistent with the right of the detained child to be treated with humanity and dignity and in accordance with the needs of their age. Article 37 (c) stipulates “every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances”. The phrase “save in exceptional circumstances” accordingly means to provide State Parties with discretion exercisable in the best interest of the child in cases where family members continue to exert damaging influences on the child (Liefwaard, 2008).

Likewise, as prescribed in Article 12 (1) of the UNCRC, States are duty bound to seek approval first with the child before restraining his or her right to access family members while detained. Furthermore, Article 9 (4) of the UNCRC sets down the requirement for the maintenance of family contacts of the child. When a child is detained, a State Party is under a duty to provide to the parents, or where appropriate to other family members, essential information on the place where the child is in custody or detained.

The United Nations Convention on the Rights of the Child appears to provide children in conflict with the law with laudable special protection. Its particular provisions, such as prescribing better alternatives first before resorting to detention or imprisonment, have led to a change of perception towards children in conflict with the law. However, despite this, the Convention is marred by issues of lack of clarity on some of its provisions. Even so, this lack of clarity is addressed by other related child-rights based human rights instruments, like the Beijing and JDL Rules. It is also noteworthy to mention that although there are some gaps in the instruments, it cannot be denied that in one way or another, they provide a robust set of standards that is worthy to be emulated.

The next section, will examine the impact of the UNCRC by looking into how the State Parties acted under the Convention towards their dealing with their respective children in conflict with the law.

2.3. International Trends, Practices and Challenges for State Parties in Fulfilling their Commitment to UNCRC

Section 2.2 of this chapter has reviewed the international legal standards for protecting the rights of children in conflict with the law, through the United Nations Convention on the Rights of the Child. Prior to the creation of the UNCRC, there was no international binding rule that obligated states to specifically secure and guarantee protection of children in conflict with the law. Although the Beijing Rules were in existence before the adoption of the UNCRC, they have no legal force as the said Rules merely provide guidance on what an ideal justice system is for children (Fortin, 2009).

States that have ratified the UNCRC are under a legal obligation to enforce the Convention in their respective domestic jurisdictions. It is therefore useful to consider how State Parties have acted domestically, both in terms of legislation and practice, in implementing the UNCRC and other child-rights based instruments. Is the UNCRC clear enough for States Parties to easily comply with its provisions? Or are there any perceived challenges that hinder State Parties' commitment to the Convention? These questions are important because, we can shed light on the reasons for the policy implementation gap, for example are international legal standards sufficiently clearly worded to protect children in conflict with the law?

Unlike the Beijing Rules and other child-rights based international instruments – such as the JDL Rules, Riyadh Guidelines, Tokyo Rules, and Vienna Guidelines – the UNCRC is legally binding on States Parties. The UNCRC was opened for signature in January 1990, and it becomes effective when a certain number of states have ratified the Convention. In terms of the number of states who have ratified it, it is said to be record breaking as there is no other international human rights treaty to be ratified by so many states in such a short span of time (LeBlanc, 1995). At the time of writing, there are 196 State Parties (UN Treaty Collection, 2017), leaving the United States of America as the only state yet to ratify.¹⁸

¹⁸ South Sudan ratified the UNCRC on 23 January 2015, and Somalia on 1 October 2015.

The number of States Parties that the UNCRC attained is significant in terms of greater protection for children in general. Many states are recognizing not just the agency of childhood but also the vulnerabilities of children that deserve a special kind of attention and protection. Special provisions for children in the criminal justice system, as enshrined in Article 37 and 40, are among the concepts that this Convention has instituted in a single document which undeniably created impact in the lives of children in conflict with law. For that reason, it can be said that the journey of child protection has truly become far-reaching already; however, has it really been effective thus far in terms of protecting the rights of children in conflict with the law?

The UNCRC's Article 4 requires State Parties to take "all appropriate legislative, administrative and other measures" for implementation of the rights contained in it. Hence, after ratifying the UNCRC, each State Party is legally obligated to implement the standards in the Convention at the domestic level (Committee on the Rights of the Child General Comment No. 5, 2003: section 1). Moreover, the Committee on the Rights of the Child also provides that State Parties are legally bound to guarantee that all of their domestic legislation is consistent with the principles and guidelines the UNCRC. Thus, the actual protection of the rights of the children in conflict with the law is dependent on the legal regime of each State Party at the domestic level.

The Committee on the Rights of the Child (herein referred to as the Committee) in its review of reports by State Parties on their implementation of the UNCRC has shown that there are still many states who have failed to translate UNCRC's provisions concerning the administration of children in conflict with the law into their domestic legislation or even in practice (UN Doc. CRC/C/90). Moreover, in the general comment of the Committee in 2007 on CICL, they have stated that,

... many States Parties still have a long way to go in achieving full compliance with [UN]CRC, e.g. in the areas of procedural rights, the development and implementation of measures for dealing with children in conflict with the law without resorting to judicial proceedings, and the use of deprivation of liberty only as a measure of last resort (UNCRC Committee, 2007: par. 1)

It is now more than two decades since the UNCRC was adopted, yet it appears that some states have still not yet fully integrated the standards of the Convention into practice,

especially in dealing with children in detention. The Global Study on Children Deprived of Liberty (2014: 4) declares that while significant improvements have been seen in different countries in terms of implementing the rights of the child, “progress is lagging when it come to the Convention’s requirements regarding deprivation of liberty.” In the final report of Sergio Pinheiro (2006: 16), who was appointed to lead a Study on Violence Against Children on behalf of the Office of the UN Secretary General, it was noted that:

Millions of children, particularly boys, spend substantial periods of their lives under the control and supervision of care authorities or justice systems, and in institutions such as ... police lock-ups, prisons, juvenile detention facilities and reform schools. These children are at risk of violence from staff and officials responsible for their well-being. Overcrowding and squalid conditions, societal stigmatization and discrimination, and poorly trained staff heighten the risk of violence. Effective complaints, monitoring and inspection mechanisms, and adequate government regulation and oversight are frequently absent. Not all perpetrators are held accountable, creating a culture of impunity and tolerance of violence against children.

Michael Bochenek¹⁹ (2010) writes that not all countries have legally set up a juvenile justice system, despite the fact that they have ratified UNCRC. In Indonesia²⁰ for example, Human Rights Watch found in 2013 that facilities are often overcrowded, unsanitary, and occasionally flooded. Children were also found to have no access to education and inadequate recreation time (as cited in Global Study on Children Deprived of Liberty, 2014).

Again, we go back to the previous question as to why it is that a significant number of states are yet to fully comply with the UNCRC’s standards, thus causing violations of the rights of children in conflict with the law. Mower (1997: 50) answers this question in a positive manner by saying that “imperfect compliance at any point in time is an obvious fact of life of any human rights treaty, as is its counterpart, that is, the expectation that parties whose degree of compliance at any given time falls short of the optimum level will improve their performance over a period of time”. This optimistic statement by Mower is plausible, recognizing that State Parties may need time to conform to international norms and standards that might not yet be compatible with their own existing local norms and standards. However, such optimism can also raise questions as to when would that time be, and how could that happen? Surely there are relevant factors that could help us understand this phenomenon. One is to know what

¹⁹ A Senior Counsel (Child Rights Division) of Human Rights Watch

²⁰ Indonesia has been a State Party of the UNCRC since 5 September 1990.

hinders these States from fully observing the rights of the children in conflict with the law in the light of the norms and standards set in the UNCRC.

One aspect to look at is the reservation expressed by several State Parties upon ratifying the UNCRC. Some State Parties have voiced reservations²¹ to Article 37 and 40. States such as Australia, Canada, Iceland, Japan, New Zealand, and the United Kingdom have expressed reservations to Article 37. On the other hand, Belgium, Denmark, France, Germany, Monaco, Norway, Republic of Korea, and Tunisia have made reservations to Article 40 (CRC/C/2/Rev.3). Based on the summarized report by the UNCRC Committee, it shows that the common reason for each State Party's reservation (not just for Article 37 and 40) is the perceived incompatibility of some provisions with its existing domestic laws and practices. For example, Iceland mentions in its reservation that the "separation of juvenile prisoners from adult prisoners is not obligatory under Icelandic law". Likewise, Japan reserves its right not to be bound by the provision separating child and adult prisoners because of the incompatibility of the UNCRC's definition of a child with the Japanese domestic laws. Other reasons, like the reservations made by Australia, Canada, New Zealand, and United Kingdom, are more based on the possible availability of suitable detention facilities for child prisoners in any of their institutions.

Mower (1997: 148) explains that the possible limitations that bar State Parties from fully complying with the UNCRC's standards "is a test and a revealer of the degree of political will that each government possesses to pursue these goals." In achieving any desirable goals, it is indeed political will that is needed. Hence, limitations such as the incompatibility of some provisions in the UNCRC to the domestic regime of a State Party and the availability of resources in providing the necessary protection for children will be taken as a challenge by States who are sincere in upholding the rights of children in conflict with the law. Conversely, those who lack the drive will use it as a "lame" excuse in avoiding their duty to protect their children, resulting in the violation of their rights with impunity.

²¹ A reservation is a statement that "excludes or modifies the legal effect of certain provisions of the treaty in their application" to the reserving state modifies or excludes the application of a provision of a treaty to the reserving state (Article 2 (d) Vienna Convention, 1969). The Vienna Convention – the international agreement that governs and guides all international treaties – stipulates that a State may be allowed to make reservations when signing, ratifying, accepting, approving, or acceding to a treaty, except for certain reasons (see Article 19). The UNCRC permits reservations, but only when such are compatible with the object and purpose of the Convention (see Article 51).

It can be argued that the act of ratifying the UNCRC itself is already a demonstration of State Parties' political will, however, as shown in the above international scenario, it seems that the real strength of the Convention is actually dependent on the willingness and sincerity of every State Party in meeting the international standards that are expected to provide protection to the rights of every child. The sincerity and willingness of State Parties can be shown in two tiers. The first is by creating domestic laws and policies that legally bind the UNCRC's protective principles for the children. By creating domestic laws and policies, Liefwaard (2008: 648) maintains that it would provide "a binding domestic legal instrument that can significantly contribute to the strengthening of the legal status of children under threat of or presently being deprived of their liberty", which can be "invoked before domestic courts". The legally binding status of domestic laws and policies is of importance, since the UNCRC (as discussed above) generally lacks such status. Secondly, along with the creation of domestic laws and policies for children in conflict with the law, there must be the faithful implementation of the State Parties' law enforcement authorities. Otherwise, it would defeat its very purpose, that is, to protect the rights of the children.

2.4. Chapter Summary

This chapter set out to review the current international human rights framework for protection of children in conflict with the law. The discussion identified the international legal framework that sets the norms and standards in the use of detention of children in conflict with the law. As presented above, the UNCRC has effectively set the principal standards necessary for the protection of children, but this chapter has also shown that the Convention faces a number of challenges when these standards are implemented by State Parties.

The next chapter moves on to examine the domestic laws for children in detention in the Philippines.

Chapter 3

Detention of Children: Examining the Philippines' Domestic Laws Governing Detention of Children in Conflict with the Law

3.1. Introduction

The Philippines carried out a significant review of the way it deals with its detained children in conflict with the law in fulfilment to its international obligations when it enacted the Juvenile Justice and Welfare Act in 2006 (later amended in 2013). This was a long-awaited development, especially after the country had been criticized by many international news organizations about the conditions faced by children in Philippine jails.²²

In this chapter, discussion reviews how the Philippines responded to its international commitments to human rights instruments through its domestic laws. It will also discuss other specific provisions of the Philippines' legal framework relating to the rights and welfare of children in detention.

3.2. The Philippines' Legal Framework for Protection of the Rights and Welfare of Children in Detention

Before the enactment of the Juvenile Justice and Welfare Act, the administration of cases of children in conflict with the law was governed by the Child and Youth Welfare Code of 1975 (Presidential Decree 603). Under this code, a child nine years of age or under at the time of the commission of the offense, and a child over nine years and under fifteen years of age, “unless act[ing] with discernment, shall not be held criminally liable”. Also, according to Article CXIX of this code, although a child offender or an accused child, who was unable to pay the necessary bail, could be committed to the Department of Social Welfare or any local rehabilitation centre or detention home, in absence thereof, such a child could be put in a

²² Big international news networks – such as ABC (03 April 2002), and CNN (10 August 2005) – broadcasted the “shocking” conditions of “child prisoners” in the Philippines.

provincial, city or municipal jail, provided that their quarters were separated from other detainees.

Although arguably, many provisions of the Child and Youth Welfare Code of 1975 are still applicable to the rights and needs of children in conflict with the law, this Code was not really a comprehensive law for administering cases for an accused child or a child offender. This Code does not encompass all issues and concerns regarding the rights of children in general. Thus, even policy makers admitted the gaps and loopholes of this Code, which accordingly did not fully protect the rights of the accused or offending child under international standards. For example, Senator Pangilinan, one of the authors of a proposed Senate bill for Comprehensive Juvenile Justice said in his interpellation speech in the Senate’s plenary session that, “the Comprehensive Juvenile Justice Bill is precisely aimed at filling the gaps and addressing the problem areas of P.D. No. 603 [Child and Youth Welfare Code of 1975]” (Senate Journal No. 28, 2005). One initial gap that the policy makers pointed out was the lack of a central agency that would specifically look at the effective implementation of policies for children who are in conflict with the law. However, the Senate bill for Comprehensive Juvenile Justice outlined clearly that the use of detention for the children in conflict with the law should be used “only as an exception rather the rule”, as it was before the enactment of the Republic Act 9344.

As a result, different sectors from both government and civil society organizations called for a more comprehensive law specifically for dealing with cases of children in conflict with the law in the Philippines. This call was fuelled further after different international news organizations – such as the Australian Broadcasting Network, and CNN – had exposed a news story of children who were detained in Philippine jails (CNN, 2006; CNN, 2005; ABC, 2002). Senator Pangilinan for example, mentioned that those “scandalous stories” from the different international media are a representation that “earnestly seeks for the immediate passage of the bill – a measure we hope will provide that giant step toward reforming the judicial system on children in conflict with the law” (Senate Journal No. 28, 2005: 312).

The Philippine Constitution also recognizes the vulnerability and special needs of children. In particular, under Article 15, Section 3 provides that “the State shall defend the right of the children to assistance including care and nutritional, and **special protection from all**

forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to their development” [emphasis added]. Further, Article II, Section 13 also provides that “the state recognizes the vital role of the youth²³ in nation building and shall **promote and protect their physical, moral, spiritual, intellectual and social well-being**” [emphasis added]. These two constitutional provisions provide the principal foundation of the Philippines in dealing with its children.

In line with the ideals of the Philippine Constitution, the Philippines was one of the early signatories of the United Nations Convention on the Rights of the Child on 26 January 1990. A few months after signing, the Philippines ratified the UNCRC on 21 August 1990. By ratifying the UNCRC, the Philippines effectively committed itself to provide special care, assistance, and to carry out appropriate measures to protect the rights and welfare of its children – including the children in conflict with the law. Furthermore, the Philippines’ ratification indicated the State’s duty to “undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the Convention” (UNCRC, Article 4).

In upholding the rights of children in conflict with the law, and translating the Philippines’ commitment to UNCRC and other international instruments, the Philippines passed the Republic Act 9344, otherwise known as the Juvenile Justice and Welfare Act. However, it took sixteen years from ratification of the UNCRC for the Philippines to pass this. Nevertheless, the Committee on the Rights of the Child in its Concluding Observations in 2009, had commended the Philippines’ move towards better protection and advancing the rights of its children in conflict with the law.

3.2.1. The Juvenile Justice and Welfare Act of 2006 (Republic Act 9344)

The Juvenile Justice and Welfare Act of 2006 is premised on two things. The first is the introduction of a relatively new legal concept in handling cases for children in conflict with the law, i.e., the “restorative approach” to justice, rather than retribution or punishment. The

²³ Under the Republic Act 8044, otherwise known as the “Youth in Nation-building Act”, youth refers to 15 to 30 years of age. This constitutional provision is also necessary as it includes those who are above 15 years and below 18 years of age, which is covered by the Republic Act 9344. As defined by R.A. 9344, “child” refers to a person under the age of eighteen (18) years (Sec. 4e).

second is the legal recognition that children, even when they have committed a violation of domestic laws, deserve to be treated differently from adults.

In comparison to previous laws, such as the Child and Youth Welfare Code of 1975 (P.D. No. 603) and the Child Abuse Act (R.A. 7610), the JJWA introduces a restorative approach of justice in handling cases of children in conflict with the law. Restorative justice, as defined by the R.A. 9344 itself, “refers to a principle which requires a process of resolving conflict with the maximum involvement of the victim, the offender and the community. It seeks to attain various goals: repatriation for the victim; reconciliation between the offender, the offended and the community; and reassurance to the offender that he/she can be reintegrated into society.” Thus, the second sentence of Section 2 (d) of the Republic Act 9344 states that “[w]henever appropriate and desirable, the State shall adopt measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.” Clearly the law aims to prevent, as much as possible, the entry of children in conflict with the law into formal judicial proceedings by creating child-appropriate alternative programs and procedures in settling their cases – that is through diversionary programs.

Another difference of the Republic Act 9344 from its predecessors is its clear legal recognition that children in conflict with the law deserve special State protection despite their commission of an offence against the State. Upon creation of this law, both the House of Senate and the House of Representatives are in agreement that children in conflict with the law should not be blamed for their actions, but instead account is taken of the social environment where the child grows. Moreover, the policy makers of both Houses stated that they view children in conflict with the law as just victims of circumstances and thus, they do not deserve any harsh punishment to be inflicted on them as a consequence of their unlawful actions (Senate Journal No. 28, 2005; House of Representatives of the Philippines [Committee on Justice Transcript of Deliberations], 2004). For example, Senator Jamby Madrigal, in her co-sponsorship speech in support of the proposed Senate Bill on Comprehensive Juvenile Justice, argued that children in conflict with the law, are mostly from poor families and are “victims of a society that criminalizes poverty by inflicting harsh sentences for petty thievery motivated by the basic instinct of survival, and amorphous ‘vagrancy’ laws” (Senate Journal No. 28, 2005). She went on to say, street children are often at the mercy of law enforcers who tend to have an interest

in locking away such visible reminders of the state's failure to provide for one of its most vulnerable groups of citizens." Furthermore, Representative Juan Edgardo Angara, one of the first authors of the then House Bill on Juvenile Justice stated that while one of the primary reasons why minors tend to commit crimes is due to poverty or (perhaps) abuse "we should not punish them for performing these acts but instead find ways to solve the underlying causes which are poverty or abuse" (House of Representatives of the Philippines [Committee on Justice Transcript of Deliberations], 2004: 9).

As a result of these debates, the two legislative chambers agreed to put in the first sentence of Section 2 (d) of the Republic Act 9344, which mandates that "[p]ursuant to Article 40 of the United Nations Convention on the Rights of the Child, the State recognizes the right of every child, alleged as, accused of, adjudged, or recognized as having infringed of the law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, taking into account the child's age and desirability of promoting his/her reintegration" (House of Senate and House of Representatives [Bicameral Conference Committee Report], 2006).

a. Minimum age of criminal responsibility

One major feature of the JJWA is the raising of the age of criminal responsibility of a child from nine years to fifteen years of age. The age of fifteen was chosen based on two studies on discernment of Filipino youth (as cited in Senate Journal No. 28, 2005). One study was conducted by the *Pamantasan ng Lungsod ng Maynila* (PLM) in 1997, which found that the age of discernment for "in-school Filipino children is fifteen years old." The other study was conducted by the Philippine Action for Youth Offenders (PAYO)²⁴ in 2002, which revealed that the age of discernment for "out-of-school Filipino children is eighteen years old". Although both studies were conducted on different period and with different focus (PLM study focused on in-school Filipino children, while PAYO study focused on out-of-school Filipino children), both showed that the age of discernment of Filipino children is not less than fifteen years of age.

²⁴ PAYO is a non-government organization, which is composed of 24 child-focused organizations in the Philippines. It aims to protect the rights and promote the welfare of Filipino CICL.

Under the law, if the child who has been in conflict with the law, is below fifteen years of age, he or she shall be exempted from any criminal responsibility. Also, those children in conflict with the law aged fifteen years, but below eighteen, shall likewise be exempted from criminal responsibility, except if the child committed an offense with “discernment”. Article 12 (3) of the Revised Penal Code of the Philippines defines discernment as the “child’s mental capacity to understand the difference between right and wrong” (People v. Doquena, 68 Phil. 580, 1939), and the “minor’s full understanding of the consequences of his/her unlawful act upon commission of the offence” (People v. Navarro, 51 O.G. 4062).²⁵ However, under the law, the child who falls under the exemption will still be accountable for his or her actions. As stated in Section 6 of the JJWA that “[t]he exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.” The child after determination of his age, shall be immediately released to the custody of his or her parents, guardian or nearest relative. This law mandates the use of appropriate intervention to be determined by the local social welfare and development officer in consultation with the child and to the person having custody of the child.

b. Initial contact with the child

According to a report prepared by the Coalition to Stop Child Detention through Restorative Justice in the Philippines (2009), it is usually during initial apprehension that the child in conflict with the law will experience abuses and certain violations of his or her rights. However, the Juvenile Justice and Welfare Act outlines the specific procedures in dealing with the children in conflict with the law at the time of the apprehension or taking into custody of the accused child by the law enforcement officers – such as police, and *barangay tanods* (village security officers) – or by private citizens. Section 21 of this law states that from the moment a child is taken into custody, the law enforcement officer shall:

- a) Explain to the child in simple language and in a dialect that he/she can understand why he/she is being placed under custody and the offence that he/she allegedly committed;
- b) inform the child of the reason for such custody and advise the child of his/her constitutional rights in a language or dialect understood by him/her;
- c) properly identify himself/herself and present proper identification to the child;

²⁵ As cited in *Llave v. People*, G.R. No. 166040, 2006.

- d) refrain from using vulgar or profane words and from sexually harassing abusing, or making sexual advances on the child in conflict with the law;
- e) avoid displaying or using any firearm, weapon, handcuffs or other instruments of force or restraint, unless absolutely necessary and only after all other methods of control have been exhausted and have failed;
- f) refrain from subjecting the child in conflict with the law to greater restraint than is necessary for his/her apprehension;
- g) avoid violence or unnecessary force;
- h) determine the age of the child pursuant to Section 7 of this Act;
- i) immediately but not later than eight (8) hours after apprehension, turn over custody of the child to the Social Welfare and Development Office or other accredited NGOs, and notify the child's apprehension. The social welfare and development officer shall explain to the child and the child's parents/guardians the consequences of the child's act with a view towards counselling and rehabilitation, diversion from the criminal justice system, and repatriation, if appropriate;
- j) the child immediately to the proper medical and health officer for a thorough physical and mental examination. The examination results shall be kept confidential unless otherwise ordered by the Family Court. Whenever the medical treatment is required, steps shall be immediately undertaken to provide the same;
- k) ensure that should detention of the child in conflict with the law be necessary, the child shall be secured in quarters separate from that of the opposite sex and adult offenders;
- l) record the following in the initial investigation:
 - 1. whether handcuffs or other instruments of restraint were used, and if so, the reason for such;
 - 2. that the parents or guardian of a child, the Department of Social Welfare and Development, and the Public Attorney's Office have been informed of the apprehension and the details thereof; and
 - 3. the exhaustion of measures to determine the age of a child and the precise details of the physical and medical examination or the failure to submit a child to such examination; and
- m) ensure that all statements signed by the child during investigation shall be witnessed by the child's parents or guardian, social worker, or legal counsel in attendance who shall affix his/her signature to the said statement.

Moreover, the same section of the said law underscores that only a law enforcer of the same gender of the child shall be allowed to search the child in conflict with the law.

c. Establishment of Child Detention Centres

At the core of implementation of the JJWA is the legal measure that aims to lessen the possible detrimental effects of deprivation of children's liberty, should detention be necessary and should detention be in the child's best interest.²⁶ Moreover, the JJWA aims that whenever detention is necessary, it should only be as a matter of last resort, with the objective of rehabilitating the child and reintegrating him or her to their families as a productive member of their communities (Section 5b and Section 44).

In the 2005 statistics by the Council for the Welfare of Children (CWC), there were approximately 3,000 children identified as detained in Bureau of Jail Management and Penology jails, city/municipal jails of the Philippine National Police, and provincial jails (Council for the Welfare of Children, 2005). The JJWA mandates the release and transfer of the children in conflict with the law to Department of Social Welfare and Development centres or local government child detention centres, and apparently there are only few of them in the country. Thus, one big question during the formulation of the JJWA was about whether those agencies and units get the necessary budget allocations to build centres or shelters for these children (Senate Journal No. 28, 2005).

Although the provision of separate facilities for children has existed in Philippines law since 1975, under Article 191 of the Child and Youth Welfare Code (P.D. 603), the reality is that prior to the enactment of the JJWA in 2006, there has always been a great challenge in putting these children in the right facilities due to the lack of suitable places (Save the Children UK, 2004). What the law hoped to achieve was to have these child or youth exclusive facilities set up in different localities by mandating the local government units (LGUs) to allocate resources for the purpose in their respective areas. Likewise, child or "youth detention homes may also be established by private and NGOs licensed and accredited by the DSWD, in consultation with the Juvenile Justice and Welfare Council" (Sec. 49, R.A. 9344).

²⁶ Section 4.

3.2.2. Amendment of the Juvenile Justice and Welfare Act (Republic Act 10630)

Four years after the enactment of the R.A. 9344, there were clamours from different sectors to amend the law. Most of those who lobbied the House of Senate and House of Representatives for amendment were from various implementing and enforcement agencies of the government. Several local government units, and government enforcement agencies had submitted resolutions with their rationale on why they wanted amendments to the law.

Since 2010 there were clamours from local governments for amendment to the JJWA as a result of the increasing number of children in conflict with the law.²⁷ According to one of the submitters, the rise in the number of children in conflict with the law in their respective areas was because children had been used by “criminal elements and syndicates” to commit illegal acts on their behalf since these children will not be criminally liable anyway (Quezon City Resolution No. 5629, Series of 2012). However, various non-government organizations specifically working for children protection, also expressed their great concern against returning the age of criminal responsibility to nine years of age. They instead called for imposing higher penalties on those who use or exploit children’s vulnerability to commit a crime (Child Rights Network, 2011; John J. Carroll Institute on Church and Social Issues, n.d.; Children’s Legal Advocacy Network, 2011; Philippine Action for Youth and Offenders, 2011). However, despite some demands to restore the minimum age of criminal responsibility to nine, both the Houses of Senate and Representatives reached an agreement to retain the age of fifteen as the minimum age of criminal responsibility.

The newly amended law (Republic Act 10630) highlighted the establishment of “Youth Detention Homes” (the term used in the R.A. 9344) or *Bahay Pag-asa* (Houses of Hope). The newly amended law also tried to address the problem of the absence of *Bahay Pag-asa* in local government areas by directing, “each province and highly urbanized city to build, fund, and

²⁷ Quezon City Council Resolution No. SP-5629, S-2012; Albay Provincial Council Resolution No. 51-2012; Guiguinto Municipal Council Resolution No. 303-2012; Puerto Princesa City Council Resolution No. 9629-2012; Compostela Municipal Council Resolution No. 2011-2337; Manila City Council Resolution No. 323 Series of 2011; Cebu City Council Resolution No. 12-1038-2011; Dipolog City Council Resolution No. 11-539; Surigao del Sur Provincial Council Resolution No. 631 Series of 2011; Tuguegarao City Council Resolution No. 193-2011; Labo Municipal Council Resolution No. 208-2011; Cebu Provincial Council Resolution No. 1429-2011; Sto. Tomas Municipal Council Resolution No. 71 Series of 2010; Surigao City Council Resolution No. 139-2010; Island Garden City of Samal Council Resolution No. 120, Series of 2010; Cebu Provincial Council 1575-2010; Cebu City Council Resolution No. 12-193-2010; Cebu City Council 1479-2010; Claveria Municipal Council Resolution No 49, Series of 2011; Iligan City Council Resolution No. 1198, Series of 2011; Dipolog City Council Resolution No. 11-282, Series of 2011; Cagayan de Oro City Council Resolution No. 10615-2011.

operate a *Bahay Pag-asa* within their jurisdiction following the standards that will be set by the DSWD and adopted by the Juvenile Justice and Welfare Council” (Section 9, R.A. 10630). For those LGUs who cannot afford to build, fund and operate their own “Bahay Pag-asa” following the high incidence of children in conflict with the law, the newly amended law appropriates four hundred million Pesos (PHP 400,000,000) for the construction of their *Bahay Pag-asa* Rehabilitation Centres (Section 13, R.A. 10630). Furthermore, the R.A. 10630 mandates any LGUs concerned to “make available, from its own resources or assets, their counterparts share equivalent to the national government contribution of five million Pesos (PHP 5,000,000.00) per rehabilitation centre” (Section 13).

3.3. Chapter Summary

This chapter has discussed how the Philippines has fulfilled its international obligation to the UNCRC and other international human rights instruments. The Philippines’ enactment of the Juvenile Justice and Welfare Act in 2006 (and its amendment in 2013) has indicated that the country is committed to being faithful to its international obligations. I have argued that the 2013 Amendment is actually a major step forward already in modernizing the country’s treatment of children in conflict with the law, particularly because it establishes new standards for the child Houses of Hope.

Discussion of the specific provisions of the JJWA in this chapter also showed that the Philippines legal mechanisms are already in place to protect the rights of children in detention. However, the enactment of the JJWA legislation is just part of that obligation that the Philippines has to fulfil. The other half is to implement the law effectively. Given the problem discussed in Chapter One in a review of secondary literature, it seems that the Philippines has not yet been able to comply fully with their obligation (the effective implementation of the law). Reports of detention of children in poor and jail-like conditions remain as a perennial concern of the country (World Organization Against Torture and Children’s Legal Rights and Development, 2016; Coalition to Stop Child Detention through Restorative Justice, 2009; Committee on the Rights of the Child, 2009).

This discussion leads me to reiterate an important question underlying this thesis project: why, despite these existing legal mechanisms, have the poor conditions of children in many of the Philippines child detention centres not changed? As framed in Chapter 1, this question forms the primary research question of this study, namely,

Despite the Philippines' legislation for children in conflict with the law through the enactment of the JJWA, **why do these problems of policy implementation still persist?**

The next chapter goes on to discuss how best to answer the research question, and outlines the practical research design. The findings of the thesis project are then presented in Chapter 5, to be followed with an analysis in Chapter 6.

Chapter 4

Research Methodology

4.1. Introduction

This chapter outlines the research strategies that will be adopted in this thesis project in order to understand and analyse the implementation gap regarding detention policies for children in conflict with the law in the Philippines. It details the use of a case study method in pursuing an in-depth analysis of the issue. As such, it explains the conditions under which that method is best used, and the advantages it affords the researcher particularly the specificity of information it is able to draw out to explicate ‘causal arguments’ (Gerring, 2004).

It also presents the key processes that will be used in dealing with the gathered data for this thesis project. The data was gathered in three ways: from review of legal documents; from in-depth interviews with four national government officials, three local public servants and three NGOs that advocate for children; and from field observations in four child detention centres in Metro Manila. Furthermore, the approach employed to analyse the data is also explained, emphasising the simultaneity and iterative nature of the research procedures. Finally, the chapter reflects on the limitations and key ethical issues faced by the researcher undertaking research in the field with children and in a politically sensitive environment.

4.2. Qualitative Research Approaches

This research is primarily qualitative in nature. According to McNabb (2004), qualitative research is appropriate for a study that aims to not just describe social phenomena but also to generate understanding, interpretation and critical analysis by employing an array of non-statistical inquiry techniques and processes. Qualitative research is “an inquiry process of understanding based on distinct methodological traditions that explore a social or human problem. The researcher builds a complex, holistic picture, analyses words, reports detailed views of informants and conducts the study in a natural setting” (Creswell, 1998: 15).

Specifically, this thesis will employ a qualitative case study method and a bottom-up approach to help understand the causal factors that contribute to the problem of the apparent ineffective implementation of the law in the Philippines. I now discuss each of these aspects of the study and the ethics procedures in turn.

4.2.1. Case Study

This investigation used a case study method to analyse the factors that are driving the ongoing detention of children in poor and inadequate conditions, despite the decade long existence of the JJWA in the Philippines. The case study method is multi-faceted. Some researchers view it as comprehensive research strategy (Denzin & Lincoln, 2003; Yin, 1994), others as a methodological approach (Berg, 2001; Creswell, 2007), or a choice within a bounded system (Stake, 1995). Creswell (2007) defines it as an approach where the researcher, “explores a bounded system or multiple bounded systems over time, through detailed in-depth data collection involving multiple sources of information and reports, a case description, and case-based themes”. An important feature of the case study according to Stake (1995), is that it explains aspects of a broader phenomenon.

There are three conditions to consider when determining whether a case study is appropriate as a research strategy, according to Yin (2014): (a) the type of question being asked, (b) the researcher’s extent of influence over actual behavioural events, and (c) the extent of focus on present-day situations versus historical event. As to the type of research question, Yin stresses that ‘how’ and ‘why’ questions are best addressed with case study, history, or experiment methods, considering the explanatory nature of the question with which “operational links needing to be traced over time.”

In the face of the case study’s popularity as a “distinctive form of empirical inquiry” (Yin, 2014), the case study method has been critically debated by many researchers. One of the major concerns with this approach is that it often lacked rigour, and the limits or boundaries can be vague, resulting in confusion over what data to collect (Denscombe, 2003). For example, cases can be selected which are not representative of theory or typical of issues experienced in the wider community. In addition, the case study procedure frequently involves interviewing participants, as such Denscombe observation that the success of a case study is dependent on the researcher’s access to interviewees. Moreover, Berg (2001) mentions that this approach is

prone to subjective interpretations of the researcher, affecting the general impartiality of the research findings. Finally, the case study approach is often attacked with its seemingly ‘ungeneralizable’ research results (LeCompte and Goetz, 1982).

However, Robert Yin (2009:15) vehemently negates these arguments against a case study approach. He says that, “case studies, like experiments, are generalizable to theoretical propositions and not to populations or universes.” Hence, in utilizing case study, the researcher can still draw analytic generalizations regardless of not having the usual ‘sample’ as present in statistical research (Yin, 2009). Another concern frequently aired against this approach is that the procedure is too lengthy and frequently produces dense, indigestible records of narratives (Yin, 2009). In this thesis, however, I argue that these concerns are outweighed by the benefits of the insights a case study method can offer. As Flyvbjerg (2006) argues, case studies can provide dense records of narratives and abundantly detailed explanation of a phenomenon. Flyvbjerg further suggests that case studies bring out useful models that are rich in detail necessary to explicate certain phenomena, such as, in this case, why there appears to be a serious policy implementation gap between the protection and aspirations offered in legislation and the experience of children in detention.

Many social science researchers view the case study method positively because of its depth of analysis, and rich and detailed information, which Berg (2001) for example, sees as vastly helpful. Schramm (1971:6) also states that the essence of a case study is that “it tries to illuminate a decision or set of decisions: why they were taken, how they were implemented, and with what result.” With that perspective in mind, I argue such a method is suited for this research because it seeks to know and understand the causal factors that influence the implementation of the Juvenile Justice and Welfare Act by Local Government Units (LGUs) in the Philippines.

In adopting a case study method, this research will conduct interviews and fieldwork observation in four child detention centres that are managed by local governments, as sample cases for identification of the problems of implementation of the Juvenile Justice and Welfare Act in the Philippines. Reasons justifying the selection of these centres are discussed later in section 4.3.1(c) of this chapter.

4.2.2. Bottom-up Approach

Alongside the case study method, this research project was influenced by a bottom-up approach to social research. A bottom-up approach is an “inductive approach to qualitative research” that starts by determining the actors at the local level of the policy implementation hierarchy and identifying their “goals, strategies, activities, and networks” (Hjern et al., 1982). According to Matland (1995) in his review of policy implementation literature, bottom-up theorists like Berman (1978), Hjern and Porter (1981), and Lipsky (1980) contend that “a more realistic understanding of implementation” can possibly be acquired if the policy is evaluated from the perspective of the “targeted population” and the “service deliverers” or here referred as the front-line workers²⁸. I was interested in this bottom up perspective to complement my initial review of the legislation reported in Chapters Two and Three. I wanted to understand how the law was being implemented and learn from the insights of those charged with putting the law into practice.

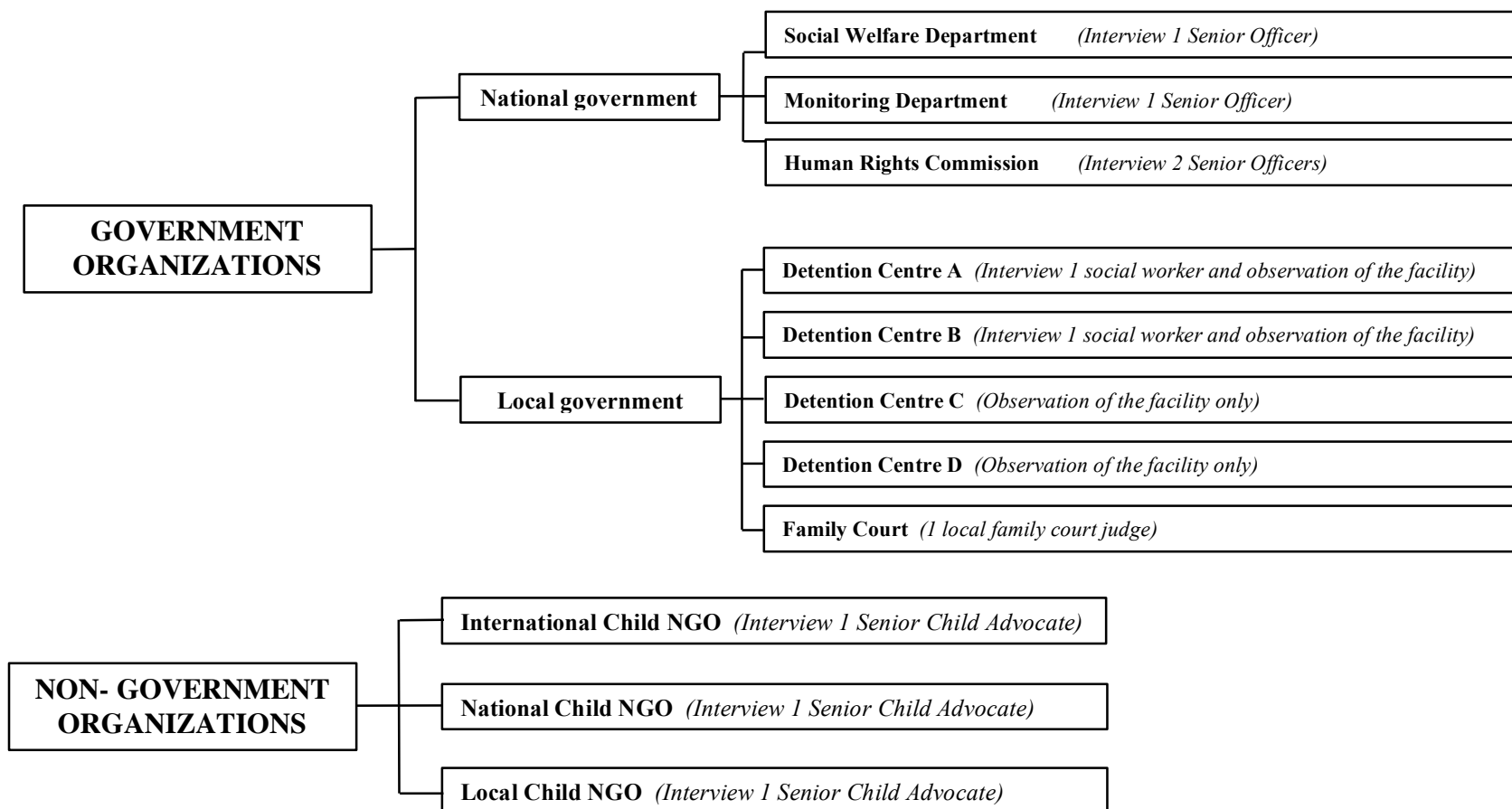
To apply a bottom up approach in this research, local actors who have involvement in the implementation of the policy being studied were identified through snow ball referral. Field observations and readings were also used to provide insights into contextual factors that possibly influence the implementation of the said legislation. In this study, local actors were represented both by the local governments,²⁹ and by a non-government organization that actively works with the local governments.

After the in-depth interviews at the local level, five key informants who have national responsibilities for policy implementation were also interviewed. How these informants were identified and how their interviews contributed to the overall research design is discussed in section 4.3.1(b).

²⁸ The term front-line workers was first widely introduced by Woodrow Wilson in 1967.

²⁹ Subject to the limitations of this study (as discussed below), the analysis of the findings from local government organizations focuses mainly on the responses given by the front-line workers or those public employees that directly deliver services, particularly the local resident social workers, and other personnel of the visited child detention centres.

Diagram 4.1. The diagram below shows the schedule of field interviews and observations held in the period of May-June 2016.



Total Number of Interviews: 10 (7 Government Officers, and 3 NGO Child Advocates)

Total Number of Observations: 4 (Detention Centres A, B, C, and D)

4.3. Research Design

4.3.1. Data Collection Process

The research for this case study was conducted using three methods for data gathering, namely: document analysis, in-depth interviews, and field observation. This approach can also be called a mixed method process of data collection. The use of multi methods not only provides a more in-depth data set but also allows the researcher to validate findings and thus increase the reliability of the findings (Yin, 2009).

a. Document analysis

In order to meet the overall objective of describing and explaining the factors that affect the policy implementation of the Juvenile Justice and Welfare Act in the Philippines, this research first examined the international instruments or legal statutes that impact on the rights of children in detention (see Chapter 2), and examined the Philippines' Juvenile Justice and Welfare Act itself (see Chapter 3). This analysis of legal texts and documents gave a preliminary idea and further enriched my understanding of the topic being studied. According to Yin (1982), this data gathering technique allows researchers to begin to delineate the field for their research.

For this thesis, other secondary literature was gathered and documents drawn from both online sources, and actual hard copies of materials from government and non-government agencies were analysed. The specific documents that were gathered and analysed include the following: Philippine legislative proceedings; implementation reports from the Juvenile Justice and Welfare Council; monitoring studies from different NGOs, organisational reports of local government-run child detention centres, media reports, notes from the 2016 Philippine Juvenile Justice Conference, and personal communications from a variety of relevant individuals and organizations.

b. In-depth semi-structured interviews

While the primary and secondary documents were gathered and initially analysed, institutions and individuals were simultaneously identified for in-depth semi-structured interviews. Semi-structured interviews aim to “strike a balance between a structured interview and unstructured interview. In the semi-structured interviews, the questions are open ended thus not limiting the respondents/interviewees’ choice of answers” (Gubrium and Holstein, 2002; McCracken, 1998 as cited in Srivastava and Thomson, 2009: 75). In this case I felt that in-depth interviews of relevant institutions and individuals were vital as they offered an opportunity to explore in more detail the data provided in the legal documents that were also analysed. Likewise, the interview process allowed me to determine if more documents needed to be gathered and examined, and as well as identify other key respondents who could provide more information for this study, or issues and topics that I had not understood which might be relevant to understanding the policy implementation gap.

In the selection of key respondents, “purposive sampling” (Creswell, 2007) was used. Considering the exploratory nature of this research – that is, seeking to identify and analyse the factors or barriers that affect the effective implementation of the Philippines’ Juvenile Justice and Welfare Act – purposeful selection is logically fit for this study, rather than any other means of selecting respondents for interview. Thus, following this strategy, I identified organizations and individuals whose roles had involvement in the JJWA implementation process, and I also chose two contrasting cases, one where the literature and reports suggested the outcomes for policy implementation were positive, and one case where the secondary reports suggested the community was struggling to implement the detention policy effectively.

The interviews were recorded by digital audio with the written consent of the respondents, in accordance with University of Canterbury ethics guidelines (see Section 4.3.2).

c. Field observations

Observations in four child detention centres that are managed and operated by local governments in Metro Manila were also conducted at the invitation of my first informants, who recommended that I could also conduct field visits to centres at their invitation which that hold children deprived of their liberty.

The plan to conduct a field observation was realized when the NGO that I interviewed invited me to join their visit³⁰ to four child detention centres in Metro Manila. With permission from my research institution, I then visited four child detention centres through that NGO as an observer only.

These field observations provided the opportunity to cross-validate the data from the documents and from the responses I got in the conduct of in-depth interviews with my key informants. Field notes were recorded immediately after the site visits and some notes taken on site, but no recording devices were used and no identifying information was retained.

4.3.2. Ethical Considerations

The field interviews in the Philippines were conducted according to the guidelines set by the University of Canterbury Human Ethics Committee. Letters of invitation to participate in the research interview process were sent to identified individuals, a letter of application to join the NGO visiting local child detention centres was provided, and permission was granted for me to join with observer status. A set of semi-structured guide questions were sent by email to all potential interview respondents. In the email that was sent, it was made clear that their participation in the study was voluntary, that their responses were to be taken with confidentiality, and that no specific child detention centres of Local Government Unit would be identified (see Appendix 1). Before the start of every interview, the respondents were informed again of the context of the study, and their permission was asked to record the interview proceedings digitally using oral recordings only. The respondents were also

³⁰ The NGO is not named but was a certified non-government organization charged with helping some children who are detained in a Bahay Pag-asa, who apply to be transferred to the NGOs own facility for children in conflict with the law. The name of the NGO is not reported nor the reasons for the transfers.

requested to sign a consent form that explained their rights during and after the conduct of the interviews. (See Appendix 3).

For the field observations, additional guidelines set by the visited child detention centres were followed. Prior to the schedule of observation, a formal letter was first forwarded to the City Social Welfare and Development Office (CSWDO) and then, through them, I was directed to communicate and arrange a meeting with the head of the visited detention centre.

During the conduct of field observations, I was able to have an informal conversation with the resident local social workers in their offices. These social workers oriented me to their policies before the start of the tour. As noted above, one part of their policy was that I was not allowed to take any photo or video of the facilities. All conversations with them however were digitally recorded and they were given the opportunity to read and check their transcript. Given the potential political sensitivity of the findings of my report, for both myself and those I interviewed, my research was discussed with the chair of the University of Canterbury Human Ethics Committee. It was agreed to embargo the thesis and to publish more limited papers later that do not describe the detail of political observation and commentary about the child detention facilities that I note in my results.

4.4. Analysis of Data

4.4.1. Treatment of Data

This thesis project utilized ‘framework analysis’ as a paradigm for processing the raw data gathered from interviews and field observations for this study. As developed by Jane Ritchie and Liz Spencer in 1980s, this framework involves a “systematic process of sifting, charting, and sorting material according to key issues and themes” (Ritchie and Spencer, 1994: 177). The procedure for framework analysis involves the following processes:

- a. familiarization with the transcripts of the data collected (that is, for this thesis project, interview transcripts, and field notes from observation);
- b. identifying a thematic framework through “coding” out from the recurring “key issues, concepts, and themes”;

- c. indexing which involves identifying “portions or sections of the data that correspond to a particular theme” (as cited in Srivastava and Thompson, 2009: 76);
- d. charting of specific portions of data in tables with headings and sub-headings that were drawn from the thematic framework; and
- e. interpretation and providing explanation of the themes emerged from the data (Ritchie and Spencer, 1994).

Using framework analysis, the digitally audio recorded data gathered from field interviews were first manually transcribed verbatim. The transcriptions and field notes from observation were then carefully coded in different conceptual categories with the guidance of the research objectives, the primary research question, and the analytic approach that is used in this study. After which, codes were arranged into classified divisions based on their common aspects, which were then narrowed down from broader codes to more refined codes. The refined codes were then classified according to the similarity of their concepts and grouped together into different themes. Interpretation and explanation of the themes that emerged from the collected data then followed.

The next section discusses the analytic approach used in interpreting and explaining the themes that emerged from the interviews and field observations conducted for this thesis project.

4.4.2. Analytic Approach

Qualitative researchers (Berg, 2001; Creswell, 2007; Yin, 2009), suggest that in order to analyse qualitative data, one has to find an analytic approach that is deemed fit in explaining the phenomenon being studied. As discussed in Chapter One, the primary aim of this thesis project is to understand and analyse the causal factors (that is, by exploring the barriers and why these barriers persist) that affect the effective implementation of the Juvenile Justice and Welfare Act of the Philippines.

Analysing “policy is fundamentally political” (Bührs and Barlett, 1993: 36). Hence, borrowing from Bührs and Barlett’s (1993) approach to policy analysis, this thesis project will use a ‘meta-policy approach’ in analysing the Philippines’ policy for children in detention.

Meta-policy is a “system and context” approach that focuses on the “structural nature” of the problem of the policy being studied, rather than the actual policy process itself (Bührs and Barlett, 1993 as cited in Aslani 2015). Like Bührs and Barlett, this thesis will examine the “structural” factors using cultural, political, and socio-economic lenses in order to explain themes that emerge from interviews and field observations conducted for this study.

4.5. Limitations

This project inevitably has constraints and limitations as a Master’s thesis. I discuss the key issues I faced below and how I worked to address these.

4.5.1. Unavailability of some key informants and relevant data

The three-month period of data gathering in the field (May - July 2016) involved several challenges that resulted in limitations to the study. First, the original plan of this thesis was to interview national legislative officials (especially those who authored the Philippine Juvenile Justice and Welfare Act), and the local chief executives (mayors) of two local government units. However, the period of fieldwork was dictated by my scholarship and clashed with the national and local elections. Moreover, the lack of a functional email system in some local government units and some national government agencies also detrimentally affected my initial communication as I was trying to contact officials to establish interviews. The absence of high-level officials (such as mayors, and local legislators) from my interview pool has limited the representativeness of my findings. Nevertheless, I was able to interview a senior judicial official and administrator from two contrasting local government units and local social workers. Also the practical experience of the pressures and limited resources that these LGUs experience gave me insight into the wider context in which law is implemented

A second limitation of this study is that I was not able to secure copies of the Executive and Legislative Agenda (ELA), and the Annual Investment Program (AIP) of the local governments that I visited for this study due to the busy transition period of government after the election. An ELA is a three-year planning document that contains the major development priorities of both the executive and legislative branches of every local government. Like the ELA, an AIP is also a planning document that ranks programs, projects and activities based on

priorities of every local government which should be matched with their actual funding capability. These two documents could have helped me examine further how each visited local government prioritizes the implementation of JJWA in their respective locality. Thus, analysis in this thesis is mainly constructed on the qualitative data obtained from interviews, which may possibly have subjected the key informants' partiality over the issue. For instance, most of the key informants I have interviewed responded that one of the major factors affecting the effective implementation of JJWA is the issue of 'prioritization' of the incumbent local government officials. However, since these responses came only from local social workers, a local court judge, and other personnel in the visited child detention centres, and without the validation from a range of local government officials, the findings might not be fully conclusive.

4.6. Chapter Summary

Despite the inevitable limitations of field research for a master's thesis, this chapter has outlined how access to interviews for the study was undertaken. I have also noted the opportunity to supplement research reading of primary and secondary material with qualitative interviews and site visits and why this approach will enrich this study. I turn now to discuss the results of interviews and site observations.

Chapter 5

Presentation of Research Findings

5.1. Introduction

This chapter presents the findings from the in-depth interviews and field observations with the respondents, which were conducted in May - July 2016. The first part of this chapter profiles the participants and local child detention centres which were visited. The second part is divided into four sections, which address the guide questions which were asked during the interviews.

For the purpose of presenting the findings, responses to the questions are categorized into five themes (see figure 5.2). These sections will be as follows:

Section 5.3.1 – Efficacy and sufficiency of JJWA;

Section 5.3.2 – Institutional experiences/encounters in applying the JJWA;

Section 5.3.3 – Views on the conditions of *Bahay Pag-asa*;

Section 5.3.4 – Institutional initiatives;

Section 5.3.5 – Areas of improvement of the JJWA.

5.2. Participants’ Profiles

A total of ten respondents participated in interviews for the study: four were selected from national government offices, two from local child detention centres, one family court judge, and three from child-serving non-government organizations. All of my respondents are considered as “key informants” for the topic on juvenile justice for children in conflict with the law. Most of them were directors and heads of their organizations and some are focal point persons in their organizations. The key informants were selected using snowball referral.

Originally, this thesis only intended to conduct in-depth interview with key informants working in policy drafting; however, upon arriving on the field, my first informants recommended to me that I could also conduct an observation at some of the child detention centres that are managed and operated by local governments. As outlined in the methods chapter, formal permission was then sought for me to participate as an observer of an unnamed charitable organisation who invited me to join their visit at four child detention centres in Metro Manila. With permission from my research institution, this resulted in informal interviews with additional *Bahay Pag-asa* personnel. I summarize my impressions of these observations in Table 5.1.

Table 5.1

Number of Respondents in In-Depth Interviews and Field Observations

	Government	Non-Government	Total
Number of In-Depth Interviews	Social Welfare Department (1) Monitoring Department (1) Human Rights Commission (2) Detention Centre A (1) Detention Centre B (1) Family Court Judge (1)	International Child NGO (1) National Child NGO (1) Local Child NGO (1)	10
Number of Field Observations	Detention Centre A Detention Centre B Detention Centre C Detention Centre D		4

Note: (n) – indicates number of persons interviewed

All the in-depth interviews were digitally recorded, and later transcribed for analysis. The field observations on the other hand were conducted by means of a guided tour of the facility and an informal conversation with the personnel working in the detention centre (social worker, house parent, and house guard). The tour inside the facilities visited took place with the consent of the head of the child detention centres on condition that no part of it should be

digitally recorded. For this reason, comprehensive note taking was done after the observation of each facility.

All interviews were conducted in their respective offices. Although interview questions were asked in English language, the responses were partly English and partly in the Filipino (*Tagalog*) language. The responses that were in the Filipino language were translated into English, and copies were provided to the interviewees after all the transcriptions were completed.

5.3. Findings

As mentioned in the introductory part of this chapter, the ten guide questions are categorized into five themes. Table 5.2 illustrates the categorization of the guide questions.

Table 5.2
Categories of Guide Questions

Section	Category	Question Number	Guide Questions
1	Efficacy and Sufficiency of the JJWA	1 - 4	<ol style="list-style-type: none"> 1. In your view, what are the most important issues we need to understand about the existing Philippines' laws and policies regarding children in conflict with the law? What about the particular Philippines' policy for arrest, detention, or imprisonment especially for children? 2. Do you think our existing laws and policies for children in conflict with the law are sufficient to protect their rights and welfare? 3. Do you think the existing Philippines' laws and policies are consistent with the United Nations Convention on the Rights of the Child? 4. How do you think the Republic Act 9344 of 2006 (Juvenile Justice and Welfare Act) and its current amendment Republic 10630 of 2013,

			have affected the conditions of children in conflict with the law, especially on the issue of detention? Has it made any difference in your view to the situation facing children?
2	Institutional Experiences / Encounters in Applying the JJWA	5	5. Can you please share your experiences in implementing the law for CICL? What are the challenges that your office has experienced in implementing the law for CICL?
3	Views on the Conditions of <i>Bahay Pag-asa</i>	6 - 7	6. What can you say about the current conditions of <i>Bahay Pag-asa</i> for children in conflict with the law in the Philippines? What are your views about this? 7. What do you think are the underlying reasons why some still fail to meet the standards set by the law?
4	Institutional Initiatives	8	8. Can you tell me about specific initiatives that your agency is doing in addressing this gap in the implementation?
5	Areas of Improvement of the JJWA	9 - 10	9. What do you think can be done to help improve the implementation of the Juvenile Justice and Welfare Act of the Philippines? 10. Is there anything that you would like me to highlight on my thesis which you think is relevant to children in conflict with the law?

Having outlined the groupings through categorization of the interview guide questions, this chapter now turns to present the findings from the in-depth interviews and field observations.

5.3.1 Efficacy and Sufficiency of the Juvenile Justice and Welfare Act (JJWA)

All the respondents mentioned that the most important issue about the law is about people's understanding and comprehension of the nature and message of the law. For example, the Senior Officer of the Monitoring Department said:

*Isa sa nakikita kong factor bakit hindi na i-implement nang maayos ang batas ay ang attitude [nang mga tao]. Malaki talaga ang kailangan nating baguhin sa attitude ng mga tao kasi marami silang **misunderstanding** doon sa batas.*

One of the factors why the law is not properly implemented is the attitude of the people towards the law. People need to change their attitude towards the law because many of them still **misunderstand** it.

Accordingly, this Senior Official implies there are still a lot of people, especially the staff frontline policy implementers, who do not fully understand what the law really means and what it is for.

As to the sufficiency of the law, each respondent agreed that the current Juvenile Justice and Welfare Act (referring to the amended version of the Act – R.A. 10630) is “good enough” to protect the rights of the children in conflict with the law and is accordingly consistent with the United Nations Convention on the Rights of the Child. The Senior Official of the Monitoring Department for example proudly mentioned that the Philippines’ JJWA is a “landmark” juvenile justice law in Asia and was in fact, nominated as one of the best policies by the World Future Council in the 2015 World Future Policy Awards, which recognize best laws and policies in the world that secure child rights.

Interestingly however, all respondents also suggested that the problem is not with the content of the law, but it is with the “effective and meaningful implementation” of it, for instance,

Senior Official 2 mentioned:

Maganda na ‘yong batas, JJWA is already a good law if masusunod lang siya nang maayos.

Our law [JJWA] is already good, if it is implemented properly.

and Director of the National Child NGO said:

Hindi na natin kailangan pang baguhin ang batas. Enough na siya para ibigay sa mga implementers ‘yong sapat na mandato kung paano nila protectahan ang karapatan nang mga bata sa kulungan.

We do not need to change the law. It is enough already to give the implementers the right mandate on how they could protect the rights of children in detention.

Moreover, according to International Child NGO, its (the law’s) success is basically “dependent on people’s deeper understanding of the content and intent of the law”.

When I asked the question, “How do you think the Republic Act 9344 of 2006 (Juvenile Justice and Welfare Act) and its current amendment Republic 10630 of 2013, have affected the conditions of children in conflict with the law, especially on the issue of detention? Has it made any difference in your view to the situation facing children?” all ten respondents concurred that since the inception of the JJWA in 2006, there have been “remarkable positive changes” already in the conditions of children in conflict with the law in the Philippines. For example, the Senior Officer 1 of the Human Rights Commission said they have noticed that, based on their monitoring visits to the *Bahay Pag-asa* the previous years, there has been a decline in the number of children admitted to the *Bahay Pag-asa*. A National Child NGO had also observed through their partnership efforts with local social workers, that the number of children who had re-offended had decreased and that children were no longer mixed with adults.

However, according to the Senior Officer of the Monitoring Department, it cannot be denied that there are still children detained in jail for reasons such as the absence of a *Bahay Pag-asa* in the area.³¹ Another pitfall that they are all aware of is that many of the *Bahay Pag-asa* are still in a jail-like condition. Those facilities that are still in jail-like conditions are “actually not *Bahay Pag-asa*, those are non-standardized child detention centres. A real *Bahay Pag-asa* should be home-like”, said a Senior Officer of the Monitoring Department.

³¹ The Supreme Court Revised Rule on Children in Conflict with the Law allows children charged with non-serious offenses to be placed under the care of a jail if there is no *Bahay Pag-asa* or Youth Rehabilitation Centre available in their jurisdiction.

The Local Child NGO said that in the child detention centres that they have visited, “children were in prison cells locked behind bars and all look like really as prisoners except that they are children.” The social worker from Detention Centre B mentioned that unfortunately theirs is one of those facilities where children are still locked behind bars.

5.3.2. Institutional Experiences/Encounters in Applying JJWA

I also asked my respondents to share their experiences in implementing the JJWA, and to tell what the challenges are that their office had experienced while implementing the said law. The respondents shared various experiences about implementing the law that ranged from non-compliance, to poor communication problems. For example, Senior Officer 1 from Human Rights Commission states: “after we conducted inspections to some child detention centres, many of those LGUs still do not follow our recommendations and oftentimes, we don’t hear a response from them.” Others notes lack of support, or conflicting advice. For example, the Monitoring Department in cooperation with the Social Welfare Department and Human Rights Commission had experiences of non-compliance from local government officials, after they conducted their monitoring visits to their *Bahay Pag-asa*. For example, the respondent from the Social Welfare Department mentioned that, “when we get back to the *Bahay Pag-asa* we had visited few months ago, ... the physical condition of their facility are still the same and when we asked their personnel ... they just mentioned that they still haven’t received any action from their local officials.” National Child NGO and Local Child NGO on the other hand, being non-government organizations, reported that they had experienced difficulty in communicating with some of the local mayors who were partnering with them for their programs; hence, they had to just talk directly to local village captains.³² The respondent from National Child NGO stated:

Sa ibang local government areas na gusto naming makipag partner nang programa, ang hirap kausapin nang mayor. Hindi namin nakikita na interesado sila sa aming programa keso hindi daw prioridad ni mayor. So doon na lang kami sa barangay.

³² Barangay (Village) Captain is the local chief executive of the smallest political unit of the Philippines.

In some local government areas where we want to partner with our programs, it's so hard to coordinate with the mayors. They did not seem to be interested. So we just go to *barangay* (village) instead to implement our programs.

The social worker from Detention Centre B expressed his sentiment regarding the seeming lack of support he encountered from the people who are supposed to help them in implementing the law. "The agencies that were supposed to help us had only just been created and started to work with us just last year. I was pretty much on my own", remarked the social worker from Detention Centre B. Meanwhile, conflicting of advice for the child was a problem that the social worker from Detention Centre A had encountered. She mentioned that they had experienced that despite advising the child just to tell the truth in court, lawyers had instructed the child otherwise, because according to those lawyers, once the child admits guilt, he/she will automatically be declared guilty and there will be no room for additional conferences for diversion of the case. "We as social workers believe that the conflicting advice to the child is not helpful to his/her rehabilitation, which involves values formation – if they are instructed to tell lies", mentions the social worker from Detention Centre A.

5.3.3. Views on the Conditions of *Bahay Pag-asa*

I also asked all the respondents: "What can you say about the current conditions of the *Bahay Pag-asa* for children in conflict with the laws in the Philippines? What are your views about this?" The Senior Officer of the Monitoring Department, being part of the monitoring body for the implementation of JJWA, reported her office was still receiving reports of bad conditions in "some" *Bahay Pag-asa*. Likewise, the Senior Officer 2 of the Human Rights Commission, whose office had just conducted an on-the-spot inspection of the facilities within Metro Manila early 2016, was "surprised" when they saw the "terrible conditions" of the children who are locked behind bars. Such bad conditions in those *Bahay Pag-asa* – according to the respondent from Social Welfare Department – are the reason why the Regional Rehabilitation Centre for the Youth are becoming overly populated because some courts are no longer referring children to those *Bahay Pag-asa*.

When I asked local social workers about their views on the bad conditions of some *Bahay Pag-asa*, both of my respondents mentioned that they felt that it is actually due to the "delayed

response of the government”, particularly the national government. One of the two social worker respondents put it this way: “It is easy for them to say that we should do this and that there are standards for us to follow, but for us working on the ground, we find it not really easy.” The respondent added: “The law is already existing for ten (years but they are still yet to release the ‘*Bahay Pag-asa* standards’. We actually still do not have a copy of it.” In addition, the National Child NGO was worried about the information they had received that in one of the LGU child detention facilities, the Senior Advocate of National Child NGO said: “*yong personnel nila walang background sa social work*” (their personnel do not have a background in social work). This situation was also mentioned by the respondent from the Human Rights Commission: “It reaches in our attention, that in some LGUs there are no social workers to work with children. Actually, some are just assigned without any background in social work.”

I also asked all the respondents, “What do you think are the underlying reasons why some still failed to meet the standards set by the law?” On the surface, the implementation problems faced by the JJWA appeared to be associated with lack of financial resources of the local government to implement the law and this is often mentioned in literature as a reason for a policy implementation gap (Van Meter and Van Horn, 1975). However, the in-depth interviews also revealed a more multifaceted explanation. The respondents gave varied reasons why they thought the legal standards were not being met, from a lack of a wider understanding of the law among the implementers, to a general “mindset” of the public and “some” policy staff, implying they “did not know the standards or regulations”, and to the politics amongst implementers.

All the ten respondents commented they felt that there is still a need for a wider and deeper understanding of the law. “There are still people who don’t really see the value of it. Some still see that when the law is implemented, the child will be scot-free giving no justice to the victim”, said the respondent from the Monitoring Department. In relation to that, the respondent from International Child NGO added, “Probably the reason why there are still sub-standard *Bahay Pag-asa* (and worst is the lack of it in some areas), is that local officials do not see the need or importance to have one or to standardized on what they already have”. Moreover, the respondent from National Child NGO reported that they thought the problem lay with “the shallow understanding of the people, especially to some implementers of the law”. This respondent further said this “is perhaps still due to punitive mindset of the people”. For

example, the National Child NGO respondent said in their talks with some local officials, some officials still think that “a child needs to be punished when they violated the law”. The respondent from International Child NGO also commented that they felt that such a punitive mindset is “a cultural thing”, since in a traditional Filipino family, which is “authoritarian in nature”, a parent is likely to punish their child every time they make a mistake to teach them a lesson. With that, the Senior Officer of the Monitoring Department also commented that “there’s still a big need to change the attitude of the people as many still have misunderstanding of the law.” She also added that, “despite that, we have repeatedly explained it to them already, some are seemingly resisting with the idea of restorative justice. We’ve been used to punitive justice system.”

Another factor that appears in the in-depth interview is the issue of politicizing of the implementation of the JJWA. During the interview, the respondent from the National Child NGO shared a narrative from one of the participants in the Philippine Juvenile Justice Congress (PJJC)³³: “In one city, a *Bahay Pag-asa* was established because it was the ‘pet project’ of the former mayor but when the mayor was replaced, the facility lost its funding.” Another narrative that was shared during the PJJC, according to National Child NGO, is that in some local government units, the local officials appoints their political supporters to do social work in their *Bahay Pag-asa*, who actually do not have a background in social work. In the same conference, someone shared an experience where a certain barangay (village) had diverted the use of the budget that is supposedly allocated for children in conflict with the law in their area into other projects.

Another factor that surfaced in the interviews was the varying levels of political will and motivation of the local officials to implement the law. The Senior Officer of the Monitoring Department, for example, mentions that the success of the law relies on the “openness and cooperation” of the local government units (LGUs). She further commented, “*malaking role talaga ang gagampanan nang LGUs sa pag-iimplement nang batas* (LGUs should be playing a big role in implementing the law). The law requires them to allocate funding from their Internal Revenue Allotment (IRA) to implement juvenile intervention programs and for the establishment of standardized *Bahay Pag-asa*”. This suggests that, at least from the perspective of the Senior Officer of the Monitoring Department, political will is a big factor influencing

³³ The Philippine Juvenile Justice Congress (PJJC) happened last October 2016, wherein it was attended by different sectors from both government and non-government organizations.

when or if local officials will take the lead in the effective and meaningful implementation of the law. “But to make that happen, there has to be a ‘political will’ to implement the law”, mentioned the Senior Officer of the Monitoring Department.

5.3.4. Institutional Initiatives

In the interviews I also asked respondents, “Can you tell me about specific initiatives that your agency is doing in addressing this gap in implementation?” There were a variety of initiatives offered. The Senior Officer from the Monitoring Department believes that having a constant dialogue with the “duty-bearers” will someday help them realize the real intent of the law, and the importance of effectively and meaningfully implementing the JJWA. By this, she means that the implementers (the “duty-bearers”) of the JJWA, particularly at the local level, will hopefully meet the legal standards set in the law in dealing with their children. For example, creating a “localised” Comprehensive Juvenile Intervention Program (CJIP) and establishing a Local Council for the Protection of Children (LCPC) that will help ensure that the rights and welfare of children in detention are respected and protected. Although the Senior Officer of the Monitoring Department agreed that the ongoing poor situation of the *Bahay Pag-asa* is a violation of the JJWA and of the UNCRC, they still opted not to file a case against the local officials and is actually not part of their policy. Instead, they want to help them first, and the rest of the duty bearers in that area. “Filing a case against the local official must be the last resort, unless it is really a gross violation of the law,” added the Senior Officer of the Monitoring Department. Moreover, to answer the question on the lack of standardized *Bahay Pag-asa* in some areas, the Monitoring Department in partnership with other agencies had conducted research to identify the local government units who will be receiving the national government grant/support for the establishment of the *Bahay Pag-asa*.

Local Child NGO are partnering with the Local Social Welfare and Development Office (LSWDO) of some Local Government Units (LGUs)³⁴ in updating the cases of children in conflict with the law in the area. Through the Local Child NGO’s criteria and after conducting case analysis, they transferred some children from the jail-like *Bahay Pag-asa* of a certain LGU to their own facility for children in conflict with the law, where children are not locked behind bars.

³⁴ With priority to those *Bahay Pag-asa* that have poor conditions.

The National Child NGO specifies their programs for children in conflict with the law as follows:

1. **Jail Decongestion** – go into jails, find and help those children who are already eligible for release. Once a child is found in jail, they find means to transfer them or release them from jail on recognizance;
2. **Restorative Action** – conduct trainings to barangays through BCPC on how to properly handle cases of CICL and children at risk. So their basic strategies are:
 - a. organize Barangay Council for the Protection of Children (BCPC),
 - b. teach them skills in planning, networking, resource mobilization, and policy writing.

The Family Court judge that I interviewed mentions that, apart from prioritizing the speedy disposition of cases of children in her court of jurisdiction, they are partnering with their local officials in activating the Barangay Council for the Protection of Children (BCPC) in their locality, by organizing them and giving them skills they need for them to be functional.

The two respondent *Bahay Pag-asa* have different initiatives considering the nature of their needs and the current condition of their facility. On the one hand, the social worker of Detention Centre B reported that due to lack of financial resources, they took the initiative of coming up with a livelihood program to augment their daily budget. According to their social worker, part of the profit of their livelihood program helped sustain their operational cost, such as their fares when they have to go to different places for the case management of their children. The social worker mentioned that sometimes they use their own personal money for the operation cost of their facility. He commented (when asked if their facility is given a large enough budget from their local government):

Nako! Actually, itong [referring to the bracelet] this is my initiative kasi nga kulang. So partly ang kita niyan ay nag susustain nang pamasahe namin. Yong sa pagkain, oo regular naman yon. Pero yong mga for case management like house visit, court visits to follow-up cases, kailangan talagang lumabas yan eh... Wala eh so we really have to find ways. Minsan we started with our very own pockets at umaray na talaga yong mga staff.

Oh! Actually, this bracelet making is my own initiative in our centre. We have to do this because our budget is not enough. Part of the income from the sales of the bracelets we make is used to sustain our daily operational needs, such as for fares going to different sites related to our job. As for food, the ration is regular. But in terms of case management, we have to visit the house of the child, go to the court to follow-up cases, and, since we do not have a large enough budget, we have to find ways. Sometimes we use money from our own pockets, but some staff are really complaining.

On the other hand, since the facility of Detention Centre A is relatively ‘standardized’ and with enough financial support from their local officials, the latter is opening up their facility to their neighbouring cities, through a memorandum of agreement. The social worker of Detention Centre A states that it is their way of saving the lives of the children from their neighbouring cities. The interviewed social worker of Detention Centre A reports:

Dito sa facility namin, hindi naming tinitignan kung saan nanggaling ang bata. Mas pinagpupuunan naming ng pansin ang kanilang pangagailangan. Sa tingin namin, ‘yon ‘yong mahalaga.

Here in our facility, we don’t look at where the child came from [referring to the LGU]. We put much more value on the needs of the child. We think, that is what is important.

5.3.5. Areas of Improvement of the JJWA

In the interviews I then asked the respondents, “What do you think can be done to help improve the implementation of the Juvenile Justice and Welfare Act of the Philippines?” The results were interesting.

The Senior Officers of the Social Welfare Department and the Monitoring Department reported that they believe they need to have more dialogues and engage further with the duty bearers, especially with the local officials. They think that the strength of the success of the

JJWA is through discussion with different sectors and helping them realize the value of properly implementing the law.

The representative from the International Child NGO suggested that there is also a need to look for models of effective implementation of the law and evaluating its success. “If there are working models, share and replicate it to other communities.” This International Child NGO believes that there is really a need for further advocacy orientations regarding the JJWA, not just to the “duty bearers” (staff members) but to the rest of the people in general.

In addition to this, the social worker from Detention Centre B said they believe that the law lacks teeth to sanction those who really cannot meet what it is asking for. So he thinks that to really improve the implementation, they must implement it and give sanction to those who cannot follow it.

Finally, the social worker from Detention Centre A supposes that the success of the implementation of the law relies not just on the duty-bearers but also with the participation and cooperation of the families of the children. She pointed out: “I believe that the real challenge does not happen at the facility. The real challenge is outside: that is, when they get back to the community.”

The implications of these results are discussed more fully in the final chapter but at the conclusion of each interview I then asked: “Is there anything that you would like me to highlight in my thesis, that you think is relevant concerning children in conflict with the law?” The in-depth interviews in response to this question revealed the commonality of thoughts of the respondents in this research. They all hoped that the people, i.e., the wider public, should see the law as a “form of investment in children”, and “for the future of the country”. The Family Court judge said, “Children in conflict with the law must be viewed as people who need help, and we as adults must respond, as, whether we like it or not, they will be part of the future of this country.” In the same spirit, the respondent from International Child NGO stated, “The kind of future that we will have for our country depends on how we treat our children of today.” Furthermore, with seemingly the same message, National Child NGO commented, “People must realize that the JJWA, which promotes restorative justice, would have a positive impact

to the society. Its ultimate goal is to restore the child to prepare them to become better citizens of the country.”

5.4. Chapter Summary

Given the limited scope of a thesis and the qualitative nature of this research, many of the findings may not be generalizable to the wider scenario of the problem of detention of children in conflict with the law in the Philippines. Moreover, I visited three child detention centres where cases of neglect or abuse had been reported and only one centre that is in relatively “good” condition. Hence, I was also aware that my observation of children in detention was drawn from cases where there were significant issues and may not represent all the centres. However, the findings have showed similarities of thought of the respondents and my observations, and the interviews also support the wider secondary literature, which suggests a significant problem still persists. It was also interesting that the respondents reported similar concerns about the issue despite being interviewed separately and on different dates and in different locations. Furthermore, the findings also suggest that policy implementers from top to bottom (national to local) recognize that indeed several implementation gaps still exist, and that the problem of the detention of children in conflict with the law is not just due to lack of resources alone but also to other several factors that lie in the social, cultural, and political character of the country. In the light of these findings, the value of detailing further how the social, cultural, and political aspects of the Philippine community may determine the effective and meaningful implementation of the Juvenile Justice and Welfare Act needs greater consideration, and this will therefore be the focus of Chapter 6.

Chapter 6

Analysis and Interpretation of Data

6.1. Introduction

This thesis was motivated by my concern that a large number of children in the Philippines appear to be detained for offences that are relatively small and have often arisen out of hardship, mostly committing minor offences³⁵ for “simply trying to survive” (Martin and Parry-Williams, 2005). The Philippines has ratified the UNCRC, which includes provisions intended to ensure the rights of children in detention. Moreover, as a State Party to the UNCRC, the Philippines enacted a comprehensive Juvenile Justice and Welfare Act in 2006 (amended in 2013), which reinforces its international commitment in securing and protecting the rights of children in detention. However, despite these legal instruments, critics argue there are still children that are detained in an abysmal conditions (Universalia Study, 2015). For example, an article written by Fr. Shay Cullen (2016), a human rights activist, notes unacceptable situations like the following: children being locked in overcrowded rooms; lack of beds, causing children to sleep on concrete floors; filthy toilets; children wearing dirty and unwashed clothes; children walking barefoot; and children with no exposure to sunlight. These were some of the “abusive” conditions witnessed by government officials of high standing during their on-the-spot inspections of four child detention facilities in Metro Manila. Children as young as six years old were seen locked behind bars for committing petty offences, and some were detained just because they were roaming around the streets in search for food to eat (Cullen, 2016).

Most of the detained children in the Philippines appear to be ‘out of school’ children and youths who come from economically and socially disadvantaged families (Bilog, 2014). This situation is disturbing as these children are particularly vulnerable because they are unable to advocate effectively for themselves. It is a serious problem if the experiences of these

³⁵ Crime against property, particularly theft is the top common alleged crimes reported by the Philippine National Police from 2002 - 2012.

children are disregarded by authorities, who are both legally and morally expected to promote and protect children's rights.

With this in mind, this thesis aimed to explore two issues. First, what are the barriers to effective implementation of the laws that protect the rights of children in detention in the Philippines? Secondly, I was interested in understanding why these barriers persist. To address my two research aims, I undertook a literature review identifying current legislation relevant to the Philippines and reviewed reasons given in secondary literature for why these laws are not implemented effectively. In addition to this desk-based literature review, I also undertook fieldwork (reported in Chapter Five), which included interviews with four national government officials, three local public servants (social workers and a family court judge), and three NGOs that work to advocate for children. Moreover, I also visited four child detention centres across Metro Manila.

This chapter aims to analyse why the JJWA appears not to be effectively implemented, which results in detention of children in poor and inadequate conditions. This will be done by investigating specific provisions of legislation that are not effectively implemented once it reaches in the local level, i.e., in local government area units. After which, possible explanations will be provided using a framework analysis through cultural, political, and socio-economic lens of the Philippines. In this chapter, I now draw on the insights both from literature and the field interviews and observations to identify the reasons why problems of effective policy implementation persist.

6.2. Assessment of compliance of the Philippines with legal instruments

The primary issue raised in this thesis is the ongoing detention of some children in appalling conditions in the Philippines, despite the more than ten-year existence of the JJWA and despite being one of the first countries who ratified the UNCRC in 1990. This raises the question of why this is the case? This sets us to focus our attention on two pieces of legislation – to examine and analyse which specific provisions of UNCRC, and the JJWA are not being effectively implemented. This section will also include a summary discussion of other related child rights and welfare legal instruments. Discussion in this section will review what has been

identified within the confines of this thesis project as being the key issues that were abridged and/or not implemented.

My visit to four detention facilities in Metro Manila allowed me to witness the actual condition of some facilities where children are detained. My impression was the same as to what has been reported in the news media and by child advocacy groups.

The problems with the conditions of the centres was borne out by the comments of my interviewees in this thesis project. For example, out of the four detention facilities that I visited, only one (Detention Centre A) is in a relatively good condition, where rooms are spacious and not enclosed with typical jail bars, children are sleeping on beds, and are able to meet the required minimum ratio³⁶ for social workers with the number of children in the facility. The other three facilities (Detention Centres B, C, and D) were the opposite. For example, in the facility of Detention Centres B and C, I saw children sleeping on floors with flattened cardboard as a mattress, and the rooms look like cages as they were locked with bars. Some little boys were shirtless, for either of two reasons: a) not enough ventilation in the room, and/or b) not enough clothes to change into. In Detention Centre B, only girls were provided with foam to sleep on concrete floors, and there was no storage for their personal belongings. They only have old boxes from supermarkets to keep their things in. Although the facility of Detention Centre D is slightly better than Detention Centres B and C, with well-lit and ventilated rooms, it still looks like a prison cell as each room is locked with bars. In addition, the facilities of Detention Centres B, C, and D are just very near to the regular adult jail.

In terms of the ratio of social workers per children, in my observation of the field sites, Detention Centres B, C, and D have not met the 1:15 ratio (one social worker per fifteen children). The social workers from Detention Centres B, C, and D that I talked to after tours in their facility, shared their sentiments that they feel too overburdened with the number of children they have. For instance, the social worker from Detention Centre C mentioned, “We have thirty-two children in our facility, and I am the only social worker hired. Being the lone social worker, apart from managing the over-all operation of the facility, I also have to do the individual case study report of the children.” This disproportionate ratio appears to be affecting

³⁶ The DSWD Memorandum Circular No. 18, Series of 2015 requires that every facility must have one social worker per fifteen children (1:15 ratio) for regular cases and for children undergoing intensive intervention, the ratio should be one social worker per ten children (1:10).

the effective delivery of services to children. For instance, in terms of children's case management, the social worker from the NGO who accompanied me on most of my visits mentioned that since there is only one social worker assigned in Detention Centre B, "the majority of case folders had no case study, insufficient recording, no legal updates and no progress report." This affects the fast resolution of the cases of the children, which often results in prolonged stay and/or indefinite confinement of the child in the facility.

The condition of children in detention shown in this thesis project supports concerns raised by media and in child advocacy group reports. All these insights suggest some violation of the provisions set out in UNCRC, and the JJWA. As the interviewee from the Monitoring Department noted, the situation of detained children in many of the facilities in the country is actually violating the UNCRC and the JJWA.³⁷ I now set out which provisions of each legal framework are not being complied with.

6.2.1. UNCRC and related UN standards

Article 37(c) of the UNCRC enshrines the quality of treatment for children in conflict with the law, where it states:

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.

As discussed in Chapter Two of this thesis, Article 37(c) of the UNCRC reminds us that children, by virtue of their age, require a much higher standard of treatment and care. This provision is a recognition that "children deprived of liberty should not be regarded as a homogenous group of individuals, but rather individual members of the group who require that their conditions and treatment respond to their personal development" (Manco, 2015). Several studies such as that of Pinheiro (2006), and Martin and Parry-Williams (2005) have emphasized the effects of detention on the child's physical, social, and psychological development.³⁸ In addition, Mendez (2015), as Special Rapporteur on Torture, reports:

³⁷ However, she supported her answer as a personal opinion and notes that the said children's condition is due to the Philippines' lack of institutions that are in line with the standards set by the law.

³⁸ Both Pinheiro, and Martin and Parry-Williams in 'The Right not to Lose Hope' point out the 'heightened risk of self-mutilation and suicidal behaviour' among juvenile deprived of liberty. The evidence provided by them mostly relates to the UK and US. Thus, in the USA, 110 youth suicides are reported to have occurred nationwide in juvenile facilities from 1995 to 1999 alone. In the UK, the Howard League reports that there were 17 suicides of children in prison between 1995 and 2004 and 28 deaths of children in penal

A number of studies have shown that, regardless of conditions in which children are held, detention has a profound and negative impact on child health and development. Even very short periods of detention can undermine the child's psychological and physical well-being and compromise cognitive development.

The possible impact of detention on children thus necessitates the need for the child to have a special kind of protection and treatment while in detention. One of which is that the environment must be conducive for the child's total development despite being (temporarily) deprived of his/her liberty. The interviewee from the International Child NGO interprets, and I concur that children in conflict with the law must not feel that they are punished for their offences, but instead to help them realize that what they did was not right. That is why facilities for these children must not be ones that would make them feel that they are punished – just like typical prison cells locked with steel bars.

There is a difference between punishing children and making them realize their offences. The former is reprimanding the child (not to mention the effects of detention on the child's development as mentioned above), while the latter is helping them to become a better individual, as cited by my interviewee from International Child NGO during the interview. This reasoning is in line with the State Parties' child development-oriented obligation as enshrined in Article 40(1) of the UNCRC, which declares that the treatment of 'every child deprived of liberty' is

in a manner consistent with the promotion of the child's sense of dignity and worth, in order to reinforce a child's respect for human rights and fundamental freedoms of others and also takes into account the desirability of promoting a child's reintegration and the child assuming a constructive role in society (as cited in Manco, 2015).

Thus it is important for State Parties to secure the physical environment of the child, as conducive for their development, and in helping them to be reintegrated back into the community as contributing citizens of the country.

Furthermore, the 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty (JDL Rules) supplement the provisions of the UNCRC, particularly with regard to what

custody in total since 1990. Providing a further worldwide picture is difficult as general international penal statistics, like Space 1 of Council of Europe, do not break the suicide rates into age or sex (as cited in Manco, 2015).

children deprived of their liberty are entitled to. Rule 3 of the JDL Rules establish minimum standards “for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.”

Among the minimum standards set in the JDL Rules are the conditions of the physical environment and accommodations at detention facilities. Rule 30 requires that detention facilities should be “open”, which the rule defines as having “no or minimal security measures”. Additionally, it also requires that the number of children in detention must be sufficiently small to enable individualized treatment. Rule 33 states further that “every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.” Detention facilities are also required to ensure that children are provided with adequate clothing is are appropriate to the climate. These UN standards³⁹, which the Philippines has signed, have not been fully observed, except for Detention Centre A, in the abovementioned conditions of the visited detention facilities for this study.

6.2.2. The Juvenile Justice and Welfare Act of the Philippines

As discussed in Chapter 3, the JJWA was enacted specifically to provide comprehensive legislation that seeks to give protection of the rights of children in conflict with the law. This legislation was enacted as part of the Philippines’ commitment to the UNCRC and other related UN standards. In 2006, the initial version of this legislation through Republic Act 9344 was firstly enacted before it was amended in 2013 through Republic Act 10630.⁴⁰

The amended Section 49⁴¹ of the JJWA requires that

each province and highly-urbanized city (the local governments) shall be responsible for building, funding, and operating a *Bahay Pag-asa* within their jurisdiction following the standards that will be set by the DSWD and adopted by the Juvenile Justice and Welfare Council.

³⁹ The UN Rules for the Protection of Juveniles Deprived of their Liberty was adopted by General Assembly resolution 45/113 of 14 December 1990.

⁴⁰ Chapter 3 of this thesis discussed that reason why R.A. 9344 was amended was due to clamors from different sectors that the said law has increased the number of children in conflict with the law and thus they want to revert the age of criminal responsibility from 15 years old back to 9 years old (as provided in Presidential Decree 603).

⁴¹ Section 9 in Republic Act 10630.

Rule 78(a) of the Implementing Rules and Regulations (IRR) of the JJWA, provides that any centres for rehabilitation or training facilities for children in conflict with the law shall be in a “home like environment”. Thus, the jail-like condition (rooms locked with steel bars similar to adult prison cells) of the visited detention facilities infringes the rights of those children (both in the spirit and intent of the international instruments and according to the laws of the Philippines).

Moreover, the 1987 Constitution – which is considered the highest law in the Philippines and to which the JJWA must conform – declares that the “State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being” (Article II, section 13). This constitutional provision is included in Section 2 of the JJWA as one of the Philippine policies that shall be observed in implementing the law. Furthermore, the Philippine government also has a constitutional “obligation to defend the right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development” (Article XV, Section 3, 1987 Constitution). These two constitutional provisions depict the doctrine of *parens patriae* (father of his country) which refers to the

inherent power and authority of the State to provide protection of the person, including the individual who lacks the capacity to act on his or her own behalf. The State is considered the *parens patriae* of minors (children) when the natural parent cannot or fails to cope with the duties of raising his or her children (*Government of the Philippines v. Monte de Piedad*, G.R. No. L-9959, 1916; as cited in Claridades, 2013).

In the landmark case of *Bactoso v. Governor of Cebu* (G.R. No. 24046, 1925), the Supreme Court of the Philippines had used the doctrine of *parens patriae* and stated: “Under the doctrine, the Government should provide measures for better care of juvenile offenders, such juvenile offenders be **not considered as common criminals** [emphasis added], but as children lacking encouragement and guidance to their normal development.” With this, considering the possible trauma and other detrimental effects that may affect the children while in detention, the Philippine Government has a moral obligation to ensure that the detention

facilities are not ones that will be “prejudicial to their development”⁴². Likewise, under the same doctrine, the Philippine government also has a moral obligation to children to ensure that the conditions of the facilities are not the same as those of “common criminals.” Putting children in a room locked with steel bars is treating children in the same way as adult criminals.

As I have seen during my field observation, the physical condition of the visited facilities was pretty much the same as with the regular jails for adults except that only children were inside. The physical condition of the facilities of Detention Centres B, C, and D are far from what the DSWD and JJWC describe in their guidelines which state: “*Bahay Pag-asa* is a ‘home’, albeit temporary, for children in conflict with the law where they are helped to appreciate their worth and rebuild their lives.”⁴³ Moreover, in the interview, the Senior Officer from the Monitoring Department states explicitly: “*Bahay Pag-asa should not be in jail-like condition. It should be home-like.*” Hence, I argue that the continuing jail-like physical conditions of many of the facilities for children in conflict with the law infringes the “spirit and intent of JJWA⁴⁴”. Such conditions are also violations of the constitutional rights of children, and the Government has breached its duty to protect those rights.

The DSWD Memorandum Circular No. 18 Series of 2015 (herein referred to as DSWD Standards) details the guidelines for the operation of detention facilities (*Bahay Pag-asa*). In Section 8, Part VII of the DSWD Standards, local governments are required to hire a sufficient number of social workers proportionate to the number of children catered for in their facility. It requires that local governments should have one social worker per fifteen children for regular cases (1:15 ratio), and one social worker per ten children undergoing intensive intervention (1:10 ratio). Likewise, this guideline also requires that the hired social workers of the facility should be “competent and duly licensed.” However, problems with the disproportionate ratio of social worker per number of children were observed in Detention Centres B, C, and D. Other staff that are hired to work in the facility were just placed by their local mayor as a political favour. For instance, the social worker from Detention Centre C noted that he was the only

⁴² Several studies – such as those of Pinheiro, Martin and Parry-Williams (mentioned above) – illustrate the detrimental effects of detention of children in a jail-like environment.

⁴³ Part VI in the DSWD Memorandum Circular No. 18, Series 2015.

⁴⁴ JJWA’s underlying principle is ‘restorative justice’ which aims to help children in conflict with the law to be reintegrated back in the community and lessening the possible detrimental effects of detention.

licensed social worker in their facility, while the rest are “*naku! ‘yong iba kung kasama ay taga suporta ni mayor*” (My other workmates [in the facility] are supporters of our mayor).⁴⁵

Aside from the staffing requirements, the DSWD Standards also require that the *Bahay Pag-asa* of every local government should provide their basic necessities for detained children, which includes adequate food, appropriate clothing, shoes, slippers, beds and clean linen, and toiletries. Other services, such as health, education, socio-cultural and recreational, and livelihood should also be provided.

In spite of this, it appears that there are still facilities in the Philippines that are not fully able to provide these minimum requirements, as exhibited in Detention Centres B, C, and D. In my visit in the facility of Detention Centre D, a child asked me⁴⁶:

Kuya, may dala po ba kayong tinapay? Kanina pa kasi umiiyak ‘tong kapatid ko, gutom po siya.

Kuya, do you have any bread with you? My younger brother is crying because he is hungry.

This instance gives me cause for reflection on the failings of the government in ensuring that at least the child’s basic needs are provided. That one example shows how the government’s failure to meet the minimum requirements is directly affecting children: they have to ask for food.

Section 6.2 highlights some of the key failings of the legislation. The JJWA has been in existence for more than ten years now, but it appears that there has not yet been full compliance, especially on the part of local governments. The next section provides some explanation of why these failings are still occurring.

⁴⁵ The said social worker clarified that, although there is nothing wrong with the affiliation of his workmates with their mayor, he thinks that they need at least one more social worker, considering their facility was catering for thirty-two children. They should have had one more social worker based on the required 1:15 ratio.

⁴⁶ The social worker who accompanied me during the tour explained that the two children are siblings (a 7 year old girl and a 4 year old boy). Both were seen wandering on the streets and were placed in their facility, and they found out that both of their parents were in the adult jail.

6.3. Cultural Norms: Emerging Punitive Populism

One of the major themes that has emerged from my field interviews is the impact of ‘cultural norms’⁴⁷, as a factor that affects the implementation of the Juvenile Justice and Welfare Act. For example, the respondent from the Monitoring Department observed that after a series of information dissemination sessions regarding the law, there is an apparent resistance from the public and implementers due to a traditional mindset:

Minsan feeling ko may resistance kahit anong turo mo, hindi talaga pumapasok at ‘yong mindset is very punitive pa rin which is dapat restorative.

(Sometimes I feel the resistance. No matter how much you teach them [about the law] it does not seem to sink in. The **mindset** for justice is still **punitive** rather than restorative in nature.) [emphasis provided]

This type of mindset can be traced back to family. Many argue that family is where values formation starts, and these values are heavily influenced by and dependent on the culture of the country. With this, asking a question of, “what common family values do Filipino parents impose at home?” is a good place to start. Alampay and Jocson (2011) describe Filipino culture of parenting as authoritarian, stressing “parental authority and child obedience and conformity.” This is supported by my interview with the International Child Foundation, where the respondent observes that a lot of Filipino parents think that their children are something like ‘property’:

anak ko yan, pwede kong gawin kahit anong gusto kong gawin sa kanya

(I can do whatever I want with my child.)

Filipinos also believe in the value of *utang na loob*, which literally means a debt of gratitude to others (Enriquez, 1994). In the paper entitled “*Loób and Kapwa: An Introduction to a Filipino Virtue Ethics*”, Reyes (2015) illustrates this virtue in a parent-child relationship, where a child is implicitly expected to give something in return to their parents. Holnsteiner (1973: 75-76) mentions:

Children are expected to be everlastingly grateful to their parents not only for all the latter have done for them in the process of raising them but more fundamentally for giving the life itself. The children should recognize, in

⁴⁷ Cultural norms are behavioural standards that a society adopts as a whole and follows when interacting with one another.

particular, that their mother risked her life to enable each child to exist. Thus, a child's *utang na loob* to its parents is immeasurable and eternal.

Therefore, the concept of *utang na loob* rationalizes Filipino parents' sense of 'authoritarian ownership' towards their children, which undermines a sense of child rights and suggests adults might feel justified in their 'proprietary views' towards children, i.e., that they can do whatever they want with their own child.

As a corollary to the virtue of *utang na loob*, Filipino parents often expect obedience from their children, such as helping them do daily household chores, and helping to look after their little brothers and sisters (Durbow, Peña, Masten, Sesma, and Williamson, 2001). Disobedience from children results in disciplinary action. Sanapo (2012) mentions that in the Filipino cultural framework, discipline often denotes "physical punishment usually in the form of spanking or beating" with the intention of "teaching the child to behave and internalize good values." Dela Cruz, Protacio, Balanon, Yacat, and Francisco (2001) likewise state that most Filipino parents think that discipline, through punishment, is an obligatory parental responsibility to correct the wrongdoings of their children. However, Sanapo (2012) adds that there are also few instances where "discipline is often used as a justification for the use of physical punitive punishment ... that could be already considered as child abuse."

Alampay and Jocson (2011) note that, because Filipino parents place such a high regard on obedience to authority as a Filipino cultural belief, this also justifies Filipino parents' and by extension, I argue, adults' use of punitive measures as a disciplinary action (Ong, 2001). Protacio-de Castro (2005:2) maintains that many Filipino parents believe that pain is indispensable for "learning to take place." Such belief, according to Sanapo (2012), could be due to the Filipinos' strong Christian background, which may have been influenced by the biblical injunction, "spare the rod and spoil the child."

This culture of punishment towards children is still evident in Filipino society today. The 2011 statistics from a Pulse Asia survey show that two out of three Filipino parents turn to punishment to discipline children sixteen years and below (as cited in UNICEF Philippines, 2015). Also the 2005 study of Save the Children United Kingdom on the use of punishment in the Philippines reveals that 85 per cent of Filipino children have experienced punishment in their home, where spanking is the usual form of punishment, at 65 per cent. In addition to this,

85 per cent of children stated that they had been punished by hitting on different parts of their body (as cited in Castillo, 2011). Unfortunately, even up to this date, the policy which is supposed to give protection to children against the use of punishment still remains a draft bill as it has not moved forward in the Philippine Senate for almost eight years (Global Initiative to End All Corporal Punishment of Children, 2017).

The ‘restorative justice’ principle introduced in the Philippine Juvenile Justice and Welfare Act, however, stands in contradiction of the traditional punitive system of Filipinos that is still practiced in many Filipino homes (Macmanus and Millner, n.d.). In this thesis restorative justice refers to

a principle which requires a process of resolving conflicts with the maximum involvement of the victim, the offender and the community. It seeks to obtain reparation for the victim; reconciliation of the offender, the offended and the community; and reassurance to the offender that he/she can be reintegrated into society. It also enhances public safety by activating the offender, the victim and the community in prevention strategies (R.A. 9344 Section 4q, 2006).

The interviews conducted in this study, particularly the respondents from the International Child NGO and the Human Rights Commission mentioned that, since the law introduces new concepts – i.e., restorative justice and progressive attitude towards children (as opposed to traditional retributive/punitive and authoritarian attitude) – people’s openness and deep understanding of these concepts is vital for the effective implementation of the law. They likewise suggest that there is no widespread understanding of these values.

But how does a punitive mindset, which is still evident in the way many Filipino parents view and treat their children, affect the implementation of the Juvenile Justice and Welfare Act? First the social actors (government officials and others who are expected to implement the law, and even the general public) are parents themselves, or if not, are at least aware of or have had personal experience of this style of parenting, so are acting in *loco parentis*, that is, as illustrated by the study mentioned above, and as is still widely used in Filipino homes. Second, the contradiction between the prevailing cultural mindset, which literature suggests is often still punitive in nature, and the restorative nature of the JJWA could have affected the decision of the officials in their hesitancy about implementing the new law. In effect, it may be that cultural norms as practiced in the family end up being translated into policies or the

implementation thereof. As the respondent from the International Child NGO noted, “How can we expect a law that introduces new principles that seems to contradict with the Filipino cultural mindset to be effectively implemented, when people are still used to the belief that, if we don’t punish the child, he/she will become worse?” Here, to implement the law effectively is to challenge the punitive kind of thinking of the people. As the Senior Officer of the Monitoring Department mentioned:

I think the issue is more on the acceptance of the JJWA because a lot of people still think that it is more of exempting the child from criminal liability. Others have not seen that when the child commits an offense, he/she doesn’t go scot-free. The child is reformed but not through punishment.

These findings suggest that addressing the policy implementation gap will require a significant public education campaign, targeting not only social workers but also the wider community and attitudes to children and their rights. However, a cultural issue of a possible punitive mindset is not the only concern that emerge from my data. The next section will discuss the political aspects of policy practice that appear to be barriers to effective policy implementation.

6.4. Politics of Implementation: Corruption and Bureaucracy, and its Effects on Political Will and Commitment

Another theme that emerged in the fieldwork that helps us understand ineffective legal implementation of the UNCRC is the politics that occur in the implementation process. Here, analysis draws closer to consider the local structure and the bureaucratic practice of the Philippines, and how it affects the will of the local leaders and bureaucrats to implement the law effectively. According to the unpublished documentation of the Philippine Juvenile Justice Congress in May 2016 provided by my respondent from the National Child NGO, the participants, who included people from different sectors and implementing agencies, have come to realize that the success of the implementation of the JJWA often depends on the political will of the local mayors and other local officials.

As discussed in Chapter 3, the implementation of the JJWA takes place mostly at the local level – provinces, cities, municipalities, and barangays. Under the JJWA, local government units are mandated by law to create a localized Comprehensive Juvenile

Intervention Program (CJIP), and to establish a standardized *Bahay Pag-asa*, particularly for the highly-urbanized cities and provinces. On the one hand, the CJIP serves as a masterplan for crime prevention, which includes 1) providing basic social services to children (primarily education), 2) programs for children at risk⁴⁸, and 3) prevention programs against re-offending for children who are already in conflict with the law. Also, every local government is required to create their localized CJIP to meet their own situation and needs. On the other hand, highly urbanized cities and provinces are required to establish a ‘temporary’⁴⁹ facility for children, in which one of the standards is that it must be in a ‘home-like’ condition. However, these requirements are not being followed, as many of the required local governments still do not have these facilities and programs for their children. Issues such as inadequate resources and lack of awareness about the law were some of the common reasons amongst the respondents, which they believe are some of the factors that bar the effective implementation of the JJWA.

Although bureaucracy⁵⁰ is generally a positive term, in the case of the Philippines, the term has become riddled with abuse of power by government officials – “corruption, nepotism, and patronage appointments” (Kang, 2002). Grossholtz (1964) in his extensive seminal study of politics in the Philippines observes that the country’s political culture is characterized by a system of ‘bargaining for favour’, which is deemed to be expected in the interaction between the politician and the constituents. Timberman (1991) relates this culture of bargaining in Philippine politics to the country’s traditional values, particularly the Filipino’s concept of high regard to ‘*kapwa*’ (others) and ‘*utang na loob*’ (debt of gratitude). These traditional values are so strong that they are easily extended to political actions (Grossholtz, 1964). Known as the *padrino* system, this patron-client relationship or patronage politics (as commonly called by some political scientists), is according to Wufrel (1988), still a part of the wider political society in the Philippines. This practice provides a system of reciprocity between the patron (politician) and the client (constituents), where the former provides a wide range of services to the latter, and the latter on the other hand utilizes his support (normally through vote) as a means of meeting the demands of the former (Scott, 1972).

⁴⁸ Children who live in an environment that is conducive for children to commit offenses against the law.

⁴⁹ It should just be temporary, as the law requires that holding children in the facility should only be as a “measure of last resort and for the shortest appropriate period of time”.

⁵⁰ According to Weber, ‘bureaucracy’ is “an ideal organization for government with a structured hierarchy of offices and competent and professional staff vested with authority to undertake defined tasks guided by the set of rules and procedures” (Rebuilda & Serrano, n.d. as cited in Caren, 2012).

These concerns about corruption were also evidenced in my interviews about the application of the JJWA. Interviewees noted that, like some other policies in the country, the JJWA has been subjected to politicization when it is applied on the ground. This law passes through different departments, bureaus, and other agencies that are expected to implement this legislation. Smith (1973:205) calls it a “constraining corridor” through which the implementation must pass. This corruptible system in local governments affects the effective implementation of the law. As the, Senior Officer 2 from the Human Rights Commission mentions, “The law is already in place, however, it is just there’s so much politics happening at the ground level.”

6.4.1. Non-prioritization

One key aspect mentioned in the interviews result was the issue of prioritization and commitment of local officials to implement the law. Stories of discontinuation of financial support for the previously funded *Bahay Pag-asa* after the electoral defeat of the mayor, and the diversion of funds that were supposed to be used for children protection programs, were some of the narratives also shared by the participants in the 2016 Philippine Juvenile Justice Congress (mentioned by the respondent from National Child Foundation).

In one city, a *Bahay Pag-asa* was established because it was the ‘pet project’ of the former mayor but when the mayor was replaced, the facility lost its funding.

Under the 1987 Constitution, local officials are given a certain degree of power and autonomy⁵¹ to decide, enact, and implement locally-made policies. Yilmaz and Venugopal (2013) argue that such distribution of power and autonomy from national to local government has in effect enabled local officials to have discretion as to what policies and programs to implement in their locality. These discretionary powers of local officials, and the apparent pervasiveness of patronage politics in the country, allows the system to be easily abused by those who hold power. A politician could simply use his/her discretionary power by prioritizing policies and projects that are in line with what their constituents (the public) are

⁵¹ Although the central government still exercises major powers, the Local Government Code of 1991 devolves to local government some powers allowing for discretion to legislate, decide, and act on locally-formulated policies.

demanding, but not necessarily with what his/her jurisdiction actually needs, or what is required by the law.

In a study on the voting behaviour of Filipinos, the Institute for Political and Electoral Reform of the Philippines (2004:17) shows that “the most important factor for them [the public voters] in choosing the candidates are those from whom they will benefit the most.” This goes to show that the voters’ first consideration in choosing is the personal benefits expected from the politicians. Consequently, politicians have to meet these expectations, i.e., retaining voters’ continuous support through meeting public demands.

A thesis of this size is unable to determine if there is extensive public demand for the effective implementation of the Juvenile Justice and Welfare Act. The level of public support is admittedly difficult to establish due to absence of data about such a claim. However, we can draw some inference from proxy studies about the general attitudes and the immediate concerns of Filipinos. Najam (1995) pointed out that government⁵² priorities are shaped not only by their agencies but also by the realities and concerns of their clients (the public, and potentially their voting constituents). So what are the realities and the apparent urgent concerns of Filipinos? As mentioned in the preceding section, the ‘culture of punishment’ is still seemingly evident. Hence given this punitive mindset, it would seem difficult for politicians to prioritize programs and projects that promote and protect the rights of children in conflict with the law. Allocating budgets for these children may seem like giving an impression that the politician tolerates the wrongdoing of the child, which again as discussed above, is not culturally acceptable to many Filipinos. Moreover, Macasaet (2010: A3) asserts that “programs are calculated to attract votes...” Thus, since patronage politics is still deeply embedded in the Philippine political system, which is part of the Filipino cultural mentality of *utang na loob*, politicians would definitely ensure that their programs would not contradict the views of their constituents as they might lose support in the next election. In addition, according to the 2015 survey of Pulse Asia, the leading urgent concerns of Filipinos are mostly economic in nature – something that can help them to lift their lives out of poverty, such as providing jobs, and increasing workers’ pay. Given these realities and general concerns of the public, politicians tend to give priorities to these, which they can then use as a tool to secure their office for the next election, rather

⁵² Najam was referring particularly to local officials, which is also basically the focus of this study.

than the one that could potentially contradict the public's general norms – which in this case is the punitive mindset.

In summary, it appears that the practice of political exchange of favours between the politician and the public has, in effect, contributed to the marginalisation of the programs and projects for the effective implementation of the JJWA. First, the punitive mindset of the public has in a way caused them not to demand effective implementation of the JJWA in their locality, or at least to have no interest in whether it is implemented by their local officials or not. And secondly, because of this seeming lack of demand and/or care by the public in implementing the law, the politicians are less likely to give priority to it. Consequently, this non-prioritization results in inaction for localized policies for protecting and promoting the rights of children in conflict with the law, and the non-allocation of local budgets for protecting the same. Thus, as shown in the Universalia Study (2015: 34), “programs on how children are valued and treated in a way is up to the local public officials and their priorities during their term of office.”

6.4.2. Hiring of non-qualified social workers

Another aspect related to politicization of bureaucracy that affects the effective implementation of the JJWA, is the hiring of non-qualified social workers. As mentioned above, that reciprocity of favour (between the politician and supporters) is a common practice in Philippine politics. Such practice often results in, as Wufrel (1988: 35) puts it, “preferred treatment in hiring ... regardless of formal policy or legal restrictions.” Moreover, as Yilmaz and Venugopal (2013) argue, the distribution of power and autonomy from national government to local government also implicitly allows local officials to have discretion in “staffing the organizational structure of the local bureaucracy”.

One of the problems mentioned by the respondents interviewed in this thesis was that, in some local areas, employees who are working for children in detention are not child experts (or not licensed social workers). According to the Universalia Study (2015), budgetary concerns are an issue as many *barangays* from poor local governments that cannot afford to hire social workers. However, based on my interviews, politicization in hiring of licensed social workers is also the reason. For example, the Senior Officer 2 from the Human Rights Commission reports: “Based on our last visit [to detention facilities] not all are social workers.

Actually some are just assigned without background in social work”. And in connection with this, one participant in the Philippine Juvenile Justice Congress shared that in some *barangays*, the *barangay captain* (village chief) just appoints one of their supporters to the function as social worker, despite lacking any qualifications or training to undertake such functions. Although there are existing minimum standards and guidelines prescribed by the Civil Service Commission to regulate the hiring, firing, assessing performance and promoting of staff, it appears that “local governments seem to creatively circumvent certain top down employment regulations when it is not to their benefit” (Yilmaz and Venugopal, 2010: 236).

In this regard, this politicization in hiring of workers in local government, which unfortunately is an embedded part of the system, affects the sustainability of awareness and advocacy efforts made by the JJWC and other child rights advocacy groups. Awareness and advocacy efforts are seen by the respondents as an important tool for the effective and meaningful implementation of the law as it helps people understand the “meat and heart of the law”, as described by the respondent from the Monitoring Department. Although there have already been efforts to raise awareness of the law for the past ten years, according to one of the participants in the Philippine Juvenile Justice Congress, “there is very little progress”.⁵³ Moreover, based on the findings from the Universalia Study⁵⁴ (2015), there are still instances where local police and prosecutors are not fully aware of their roles in the implementation and the legal provisions on diversion, which are often the cause of children’s admittance to detention. To analyse the impact of this, we have to look at both the internal factors (the individual’s acceptance or rejection of information) and external factors (sustainability of efforts as influenced by outside structures) to explain why some implementers are still unaware, despite the existing awareness and advocacy efforts. For example, the internal factors identified in this thesis were whether those agents accept or reject such information. But to determine such is undeniably beyond the limits of this study. Nevertheless, as discussed above, there seems to be a resistance to fully accepting the law because of the punitive mindset that is still common in many Filipinos.

In terms of external factors which affect implementation of policy, the sustainability of these efforts is also affected by the term of office of every local official. In Philippine local

⁵³ From the unpublished documentation of the 2016 Philippine Juvenile Justice Congress provided by the National Child NGO.

⁵⁴ An independent evaluation of the centre-based rehabilitation programs and diversion programs as well as the overall juvenile justice and welfare administration in the Philippines.

elections, all elected officials have three-year terms, and can only serve a maximum of three consecutive terms. As discussed above, some local officials (particularly mayors) use their bureaucratic authority to repay their electoral supporters through giving them jobs in the government, even if they are not qualified. Since these officials only have three years, if they lose the next election, their ‘politically hired’ employees will also likely be replaced, as the new winning candidate will have to accommodate his/her supporters (as commonly practiced in the Philippines). This means, for example, that every three years, the new politically accommodated employees, having no prior experience or technical expertise of the job, will have to be taught the legal technicalities and the philosophical underpinnings of the law. This system affects the continuity of intervention programs for children, and often results in their prolonged stay in a child detention facility.

In interviews for this thesis, some respondents noted this problem. For example, National Child NGO in their partnering programs with *barangay* officials states:

Isa sa mga programa namin ay ang pag-advocate nang karapatan nang mga bata sa loob at labas nang facility. Minsan parati naming inuulit ulit ipatindi sa mga duty-bearers ang kahalagahan nang batas, pero hindi pa rin ito nasusunod. Napansin namin na ang isa sa mga dahilan ay ang pagpapalit palit nang mga empleyado sa ibang detention facilities, lalo na pag galing sa ibang partido ang nanalong kandidato matapos ang election ...

(One of our programs is advocating the rights of children within and outside of the facility. Sometimes we tend to repeat again to the duty-bearers the importance of properly implementing the law, yet we observed that it is still not complied with. We noticed that one of the reasons is changing of employees in some detention facilities, which happens when the winning candidate comes from another party ...)

Giving this example is certainly not to generalize the situation, as some might have been informed already about the law prior to their appointment with the job. However, this just shows the probability as to how the local structure and the possible abuse of bureaucratic authority could affect the continuity of knowledge about the law and policies applicable to children in detention.

6.5. Socio-Economic Inequalities and Dysfunctional Familial Institution

Apart from the cultural and political factors, the results of the interview data and the actual observations suggest an indirect factor that, while not directly seen as an important aspect impacting the implementation of the JJWA, is significant. The challenges of effectively and meaningfully implementing the law are part of a bigger and more complex situation of inequality and poverty – that is, a notable socio-economic gap between people in the country.

Although the Philippines is progressing economically, poverty remains a predicament among many Filipinos. According to the Philippine Statistics Authority, the poverty incidence among Filipinos is at 26.3%, as of first semester of 2015. This means that such a figure represents the Filipinos' lack of "income needed to meet their basic food and non-food needs", said by Bersales, the national statistician of the Philippine Statistics Authority (as cited in Cruz, 2016). Moreover, as for the children in the country, the study conducted by the Philippine Institute for Development Studies (PIDS) illustrated that the number of children living in poverty is increasing, notwithstanding the Philippines' recent economic growth. These findings regarding the poverty incidence in the Philippines are important in this thesis as many of the children in detention come from the "poorest of the poor" families (Coalition to Stop Child Detention through Restorative Justice, 2009: 14). As stated by the respondent from Detention Centre D:

Ang iba sa mga batang ito ay nakitang pagala-gala sa lansangan, namamalimos, at minsang napipilitang magnakaw para may pangkain at minsang panustos pa sa kanilang pamilya.

(Some of these children were seen wandering on the streets, begging for money, and some were forced by their condition to steal just for them to buy food, and also to help supply the needs of their family.)

And when asked why these children are in their facility despite the fact the UNCRC and the JJWA state that "detention should be a measure of last resort", they have justified it by saying it is just for "safe keeping" and also that even children's families wanted them to be in the facility to teach them a lesson. Moreover, they also mentioned that some of the children are from dysfunctional families, lacking parental care, which causes them to stray on streets.

In addition, one of the respondents in the Human Rights Commission mentioned that

May mga batang hindi nakakapag-aral. Anong gagawin nila? Kundi makikipagbarkada at nakakacommit ng crime. Poverty talaga is the cause. Hindi makapag provide 'yong family ng needs, so magnanakaw siya.

(These children weren't able to go to school. What will they do? They often ended up joining gangs and that influences them to commit crimes. Poverty is indeed the cause. Their families cannot provide their needs, so they go onto streets, meet some peers, and they steal.)

Cullen (2006) reported that most children in conflict with the law have committed petty crimes or minor offenses (such as vagrancy, stealing, and begging). Moreover, the study conducted by Save the Children UK (2004: 24) about children in conflict with the law and the juvenile justice process in the Philippines reveals that the most common offence committed by children is offence against property, like pickpocketing, stealing, and shoplifting. Although there were some children who might have committed heinous crimes, most of these children were just forced by virtue of their circumstances to commit offences against the law.

Being a developing country, the Philippines is faced with competing situational and public demands on its fiscal budget. Building of public infrastructure (particularly roads and bridges), agricultural and rural developments, and a peace and order, are some of the top priorities of the current national government administration in the Philippines (Cepeda, 2016). Although these are important development issues that also need to be addressed, in effect it marginalises other relevant social concerns that the government should also needs to address. For example, accessibility to education for poor families who cannot afford to send their children to school, and social support programs for poor and dysfunctional families. These are important social issues that the government also needs to look at, as statistically speaking and as mentioned above, many of the children who commit offences against the law, comes from poor and dysfunctional families. Failing to address these wider issues will keep the vicious cycle continuing: i.e., children living in poor conditions (both economic and emotional reasons caused by dysfunctional family) will be forced to go on the streets, which is unsafe for children's development, as well as being conducive for criminal activities.

6.6. Chapter Summary

This chapter presented an analysis of the findings gathered from field interviews and observations which were conducted to identify the underlying reasons behind the persistence of the problems of effective policy implementation of the Juvenile Justice and Welfare Act in the Philippines. The main themes which emerged from the collected data are as follows: the emerging punitive mindset that affects the general attitude of the people and the politicians towards the law; the politicization in the implementation brought by corrupt practices in a corruptible local structure and bureaucratic authority, which in effect, affects the political will of local officials and other agents' commitment to effectively and meaningfully implement the law; and lastly, the persisting socio-economic inequality and dysfunctional relationship among some families, which is seen as the root cause of the vicious cycle leading children into detention.

The final chapter presents a summary of the key-findings of this thesis project. It will likewise present some suggestions for future research.

“In a world that demands justice, when the unthinkable becomes reality,
there are no easy answers when that reality includes kids.”

- “Young Kids” – Calamari Productions

Chapter 7

Conclusions: Key Findings, Reflections, and Suggestions

7.1. Introduction

In this concluding chapter, a summary of the key findings of this thesis is presented. A list of suggestions for future research is also provided, whilst reflecting on the limitations and challenges while conducting this thesis project. I then conclude by reflecting on these key findings and their contributions in effectively implementing the JJWA. Lastly is

7.2. Key findings

This thesis has primarily identified the barriers that hinder the effective implementation of the Juvenile Justice and Welfare Act of the Philippines and subsequently has analysed the reasons why these barriers persist. As shown in this thesis, these barriers result in certain violations of the rights of children in detention as inscribed both in the United Nations Convention on the Rights of the Child (and other international instruments), and the Philippine Juvenile Justice and Welfare Act, hence, hampering the effective implementation of both laws. In identifying the barriers, this thesis has also reviewed and examined the relevant sections of the UNCRC and the JJWA.

As mentioned in Chapter One, although several studies conducted by child advocacy organizations mentioned that an implementation gap exists between the intent of the JJWA and the practical realities on the ground, none of those studies elucidated how and why these problems of policy implementation persist. Hence, this thesis fills that research vacuum with a comprehensive explanation on why problems in implementing the JJWA still persist by looking at the political, economic, and social and cultural spheres of the Philippines.

The second chapter of this thesis showed that even at the international level, full observance by State Parties of the UNCRC does not occur for several reasons. It discussed the reasons why a number of State Parties have not fully implemented the UNCRC. These include (i) the incompatibility of the UNCRC provisions with these countries' existing domestic laws and practices, (ii) unavailability of suitable detention facilities for child prisoners, and (iii) the degree of political will of the government of each country to pursue the goals of the UNCRC.

Although the Philippines ratified the UNCRC in 1990 and enacted a law for a comprehensive juvenile justice system in 2006, as discussed in Chapter Three, it is also facing certain barriers that hinder the effective implementation of the law. The Philippines has encountered similar challenges to other State Parties. It faced a seemingly indirect rejection when local governments in the country were legally asked to implement the Juvenile Justice and Welfare Act; i.e., establishing *Bahay Pag-asa* in their area, providing resources necessary for its operation, and for the implementation of intervention programs for the detained children. As shown in this thesis project, not all local governments respond to this. Moreover, my examination of the international and domestic legal standards shows that Article 37(c) of the UNCRC and Section 9 of the JJWA appear to be poorly implemented in many local government units in the Philippines, as many of the latter's child detention facilities are reported to have not yet met the general standards set by the UNCRC nor the specific standards of the Philippines' Department of Social Welfare and Development.

The findings of the in-depth interviews and field observations of detention facilities, together with consultation of secondary literature suggest that the problem of the policy implementation gap of the JJWA (resulting in ongoing detention of CICL in poor and inadequate conditions) appears to be due to the following factors: a) the evident punitive culture of the Filipinos, b) politicization of the JJWA's implementation at the local level, and c) the larger socio-economic inequality problems of the Philippines. These findings are not novel in the aspect of studying the policy implementation gap. In fact, these findings are similar to what the Centre for International Private Enterprise and Global Integrity (2012: 14) suggested: that the "ultimate cause for the implementation gap is a sum of several common underlying factors in political, economic, and social and cultural spheres."

The findings of this thesis project however is not to generalize universally, as the aim was to investigate the seeming ineffectiveness and slow pace of implementation of the Juvenile

Justice and Welfare Act of the Philippines, which results in certain violations of the rights of children in detention.

In general, the result of this thesis project supplements the existing body of knowledge on policy implementation analysis in the context of the rights of detained children in conflict with the law. Specifically, this thesis project offers additional insights that could be used by policy makers of the Philippines in reviewing what needs to be done in addressing the failings of the local implementers to implement the JJWA effectively and meaningfully.

7.3. Reflections on the findings for the effective and meaningful implementation of the JJWA

My review of the international and domestic legal instruments – particularly the UNCRC and the JJWA – depicts that significant laws and policies needed for the protection of detained children in conflict with the law in the Philippines are already in place to give protection of the rights of these children. As shown in this thesis project, the problem however, is seen when these policies reach local levels.

Local government officials, who are expected to take the lead in ensuring that these policies are effectively implemented in their respective localities, seem to have been implicitly granted so much discretion as to whether to implement the law or not, as evidenced in the current number of established *Bahay Pag-asa* in the Philippines. As of 2015, there are only fifteen *Bahay Pag-asa* established in a total of eighty-one provinces, and out of thirty-three highly urbanised cities, “only a handful have been able to comply” with the requirements of the JJWA (Universalia Study, 2015: iv). Although I have only observed four child detention centres – considering that the detention centres visited are: 1) in highly urbanised cities and 2) have a high incidence of CICL⁵⁵, thus, by law are required to establish *Bahay Pag-asa* – the visits suggest that not all local governments who are mandated by law, follow the law. Others may contend that the reason for the absence of *Bahay Pag-asa* could be due to lack of financial resources. However, this argument is not entirely satisfactory since in order to be considered

⁵⁵ Due to certain limitations faced during the conduct of data gathering, actual figures that would support the claim that the child detention centres visited for this study have a high incidence of CICL, were not provided. However, the four child detention centres visited were chosen based on the recommendation by my respondents, with one of the considerations being the high incidence of CICL.

as a highly urbanised city in the Philippines, local governments must have an annual income of at least fifty million Pesos.⁵⁶ Thus, given the high income of the highly urbanised cities, this would seem to show that they are financially capable of establishing and operating *Bahay Pag-asa* with the standards required by the JJWA. Also, even if the required local governments are not financially capable of operating a *Bahay Pag-asa* (say they are capable of building the required facility but do not have enough funding to sustain the needs of the operation), Section 13 of the JJWA (as amended) states that the local governments “may accept donations, grants, and contributions from various sources, in cash or in kind, for purposes relevant” for the operation of a *Bahay Pag-asa*. Hence, a local government official who understands the tenets of the JJWA and the importance of its implementation would seek out the means to ensure that the rights of the detained children in conflict with the law are respected and protected.

7.4. Suggestions for further research

In relation to the limitations of this thesis project which were presented in Chapter Five, and the discussion reported above, I now make suggestions for further research and include the following points:

1. Since the sample of the study was limited, future studies can conduct more in-depth personal interviews with the local politicians to get first-hand information about their views on either their prioritization or non-prioritization of the implementation of the JJWA.
2. In-depth interviews with parents of the children in detention, and the children themselves are also suggested in order to gain first-hand data about their perspective on the law and how it is affecting them.
3. Since the major issue being looked at in this thesis project (as a result of the findings) is the prioritization of the local governments in effectively and meaningfully implementing the law, it would have been useful also to have a look at the Executive and Legislative Agenda (ELA) and the Annual Investment Program (AIP). Taking a look at these documents will help determine further where they put the promotion and protection of the rights of the children in conflict with the law in their policy agenda.

⁵⁶ Based on the Philippine Standard Geographic Code.

4. The field observations of detention facilities were based only in Metro Manila. Future projects can also include other facilities in other major cities and provinces in Visayas and Mindanao. Different socio-economic and political conditions in these other major islands might give more detailed information for the study.

7.5. Conclusion

In analysing how policy is implemented, this thesis concludes that the effective implementation of the JJWA is heavily dependent on the will and often subject to the prioritization of local officials. Moreover, this thesis also realises that the JJWA seems to lack the teeth that would compel local officials to implement and adhere to their legal obligations. For example, despite having a penal provision in the JJWA – i.e., Section 62, which outlines sanctions for those who are found to have violated any provisions of the JJWA – no local officials (to date) have faced administrative cases or any legal sanctions for not being able to meet the requirements of the law, even if it causes violation to the rights of the detained children in conflict with the law.

The office of the Senior Government Officer interviewed for this thesis, who is in-charge of monitoring the implementation of the JJWA mentioned that they opted not to file a case against certain local officials (and this is actually not part of their policy). This is despite their belief that these officials have violated certain provisions in the JJWA, such as failing to establish the required and standardized facility for children in conflict with the law. The Senior Government Officer added that they are just conducting dialogues instead of filing a case against them, “unless it is a grave violation of the law”. The Senior Government Officer also stated that while dialogue with local officials is important, mere dialogue is just not enough, especially in a country where the system is corruptible (as discussed in section 6.4). Conducting dialogues alone without fully enforcing the law, such as filing a case against local officials who are found to have violated the JJWA, is sending a message that it is all right not to meet the requirements of the JJWA. Hence, one important point that this thesis project would raise is to fully enforce the penal provision of the law to ensure that the JJWA will be effectively implemented.

The Senior Officers from the Human Rights Commission interviewed for this thesis have all agreed that the on-going poor conditions of the detained CICL in some local government units are in violation of the JJWA. Likewise, based on my personal observation while visiting the Detention Centres B, C, and D, and after reviewing the law and discussing the situation with all ten interviewees, it appears many child detention centres violating not just Section 49 of the JJWA, but also Article II Section 13 and Article XV Section 3 of the Philippine Constitution (see discussion in Section 6.2.b of this thesis). But the question of whether such ongoing poor conditions of many of the child detention centres in the Philippines (due to non-establishment of standardized *Bahay Pag-asa*), constitutes “grave violation” (as a ground for the JJWA Monitoring Department to file a case) is admittedly difficult to answer for two reasons: 1) the JJWA does not specify what constitutes grave violation, and 2) absence of such definition requires interpretation by the Philippine Judiciary. In the Philippines, interpretation of the law is constitutionally entrusted to the Judicial Department, but since there are no actual cases filed yet regarding violations of the JJWA to any judicial courts of the Philippines, these claims remain as speculations.

The ongoing poor conditions of many of the child detention centres in the Philippines does not only violate the rights of these children. The apparent failure of many of the local government officials to establish a standardized *Bahay Pag-asa*, and failure to providing an adequate budget for the operation of their facility, and for the implementation of necessary intervention programs for detained children, could one way or another, have a detrimental effect on these children. A previous study conducted by Save the Children (2004) shows that one of the effects on children who were detained in a jail-like condition was that “they have become more hardened and no longer afraid of jail and committing further offence” (pg. 48). In a video documentary entitled “*Bunso: The Youngest*”, produced by the Consuelo Foundation and UNICEF Philippines in 2004, one of the child detainees said,

Sila ray magmahay kanamo ug dili mi nila palayaon. Inig kadagko namo, wala mi kaugmaon. Maunsa na lang kaha mi? Mangawat mi para makakaon mi.

(Subtitle: They will regret it if they don’t get us out of here. When we grow up... We don’t have future. What will become of us? Thieves! To survive.)

The findings of the Save the Children study in 2004 and the narrative mentioned by the detained child in the video documentary “*Bunso: The Youngest*” also depict a possible scenario

that in the long run, failure to change the environment of detention centres into a “home-like” facility, could create a future problem in the country in terms of criminality. Failure to provide these children with an environment that would facilitate a good upbringing for their character development could be detrimental to the Philippines later on as they could potentially become future hardened criminals of the country. The JJWA has been in existence since 2006 and, in principle, the law has been advocating a restorative approach in dealing with children who are in conflict with the law. Such an approach is a win-win solution for both the child and the future of the country. In this sense, full implementation of the JJWA, particularly establishing of standardised *Bahay Pag-asa* and providing funds for their operation is necessary and should not be treated as negotiable by the local government officials.

In summary, in this thesis I have argued that in giving protection to children in conflict with the law, passing legislation is not enough. These laws and policies must also be strictly observed and implemented. That means transforming the law from words to deeds. Translating these policies into action may be challenging, given the existing cultural, political, and socio-economic climate of the Philippines, which hinders its effective implementation. Thus, only when a change in the general attitude of the people towards the law takes place (which may take time), a stricter policy that will inhibit the politicization of its implementation, and more effective government intervention programs are set up for children living in poor and dysfunctional families, the JJWA will be an effective legal tool in protecting the rights and welfare of the children in detention. Otherwise, the JJWA will just remain on paper – in law, but not in practice.

Appendix 1

Participant's Information Sheet

College of Arts

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Web site: <http://www.arts.canterbury.ac.nz/lsap/index.shtml>



Children Behind Bars: An Analysis of the Implementation Gap between Law and Practice of Child Detention in the Philippines

Researcher: **Meikko Jay Dejillo Forones**
Department of Political Science and International Relations
School of Language, Social and Political Science
College of Arts, University of Canterbury, New Zealand

I am a post graduate student enrolled in Master of Arts in Political Science through a scholarship grant from the New Zealand - ASEAN Scholarship Program. As part of my Masters' degree, I am undertaking a research project which aims to understand the underlying challenges of implementing the domestic policies with regards to handling cases of children who are in conflict with the law in the Philippines. The University of Canterbury requires researchers to secure ethics approval before the start of data collection involving direct contact with human participants. This research will be conducted with the direct supervision of Associate Professor Bronwyn Hayward of the Department of Political Science and International Relations and Senior Lecturer Natalie Baird of the UC School of Law.

In this research, I will develop case studies through interviews among various experts working in institutions and public policy and the community sector, (national and local government authorities, and non-governmental organizations) –who have experience and understanding of the issues and challenges facing children in conflict with the law in the Philippines.

The interview will take approximately 45 minutes. All participants are able to request further information for clarification.

To ensure confidentiality, your information as a participant and your responses will be coded. Your name will not be used unless you prefer your name and organization to be named.

The interview proceedings will be recorded using an electronic recording device (with your permission) to accurately capture the interview process. The recorded interview will be secured in password protected digital files at the University of Canterbury and any information that I will use in my thesis from my interview with you would be sent to you first for validation.

My two supervisors and I will have the only access to the files and records drawn from the interview. All materials that were gathered will be kept confidential and stored in a secure location for 5 years.

Further, if you agree to be interviewed, you have the right to refuse to answer any of the questions and can request to be removed from the study at any time without penalty. You may ask you're your raw data to be returned to you or destroyed at any point. If you withdraw, I will remove information relating to you.

The data from the interviews will form the discussion and findings section of my thesis and will be part of the manuscript which will also be publicly available through the University of Canterbury Library. Furthermore, some materials used in this investigation could be used in future articles for publications in scholarly journals or research presentations, but you may be assured of the complete confidentiality of data gathered in this project: your identity will not be made public without your prior consent.

Should you have any questions, needs or further clarifications regarding your participation in this study, please feel free to contact me or my supervisor at the contact address below.

This project has been reviewed and approved by the University of Canterbury Human Ethics Committee, and participants should address any complaints to The Chair, Human Ethics Committee, University of Canterbury, Private Bag 4800, Christchurch (human-ethics@canterbury.ac.nz).

Thank you for considering this request, your time, insight and expertise is greatly appreciated.

If you agree to participate in the study, you are asked to complete the consent form and return it via email (meikko.forones@pg.canterbury.ac.nz).

Researcher: Meikko Jay Dejillo Forones

Phone: +64 21 0778 124 (New Zealand) , +63 917 703 8550 (Philippines)

Supervisor: Dr. Bronwyn Mary Hayward

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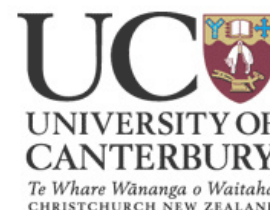
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Appendix 2

Research Guide Interview Questions

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Children Behind Bars: An Analysis of the Implementation Gap between Law and Practice of Child Detention in the Philippines

1. In your view, what are the most important issues we need to understand about the existing Philippines' laws and policies regarding children in conflict with the law? What about the Philippines' particular policy for arrest, detention, or imprisonment especially for the children?
2. Do you think our existing laws and policies for children in conflict with the law are sufficient enough to protect their rights and welfare?
3. How do you think has the Republic Act 9344 of 2006 (Juvenile Justice and Welfare Act) and its current amendment Republic 10630 of 2013, have affected the conditions of children in conflict with the law especially, on the issue of detention? Has it made any difference in your view to the situation facing children?
4. Do you think the Philippines' existing laws and policies are consistent with the United Nations Convention on the Rights of the Child?
 - a. If yes, why you think so?
 - b. If not, what do you think are the areas that the Philippine Juvenile Justice System need to be improved?
5. Can you please share your experiences in implementing the law for CICL? What are the challenges that your office had experienced in implementing the law for CICL?
6. What can you say about the current conditions of Bahay Pag-asa for children in conflict with the laws in the Philippines? What are your views about this?
7. What do you think are the underlying reasons why some still failed to meet the standards set by the law?
 - a. Loop-holed law and policies?
 - b. Financial resources?
 - c. Political will?
 - d. Political structure?

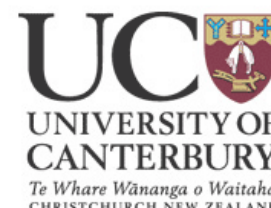
- e. Cultural values?
 - f. Lack of awareness?
 - g. Lack of training of law enforcers?
 - h. Others?
-
- 8. Can you tell me about specific initiatives that your agency is doing in addressing this gap in the implementation?
 - 9. What do you think can be done to help improve the implementation of the Juvenile Justice and Welfare Act of the Philippines?
 - 10. Is there anything that you would like me to highlight on my thesis which you think is relevant concerning with the children in conflict with the law?

Appendix 3

Participant's Consent Form

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Children Behind Bars: An Analysis of the Implementation Gap between Law and Practice of Child Detention in the Philippines

Consent Form for Participants

- ☐ I have been given a full explanation of this project and have had the opportunity to ask questions.
- ☐ I understand what is required of me if I agree to take part in the research.
- ☐ I understand that participation is voluntary and I may withdraw at any time without penalty. Withdrawal of participation will also include the withdrawal of any information I have provided should this remain practically achievable.
- ☐ I understand that any information or opinions I provide will be kept confidential to the researcher, and to the research supervisors and that any published or reported results will not identify the participants or their institution. I understand that a thesis is a public document and will be available through UC Library.
- ☐ I understand that all data collected for the study will be kept in locked and secure facilities and/or in password protected electronic form and be destroyed after 5 years.
- ☐ I understand the risks associated with taking part and how they will be managed.
- ☐ I understand that I am able to receive a report on the findings of the study by contacting the researcher at the conclusion of the project.
- ☐ I understand that I can contact the researcher or supervisor for further information. If you have complaints, I can contact the Chair of the University of Canterbury Human Ethics Committee, Private Bag 4800, Christchurch (human-ethics@canterbury.ac.nz)
- ☐ I would like a summary results of the project.
- ☐ By signing below, I agree to participate in this research project.

Name: _____ Signature: _____ Date: _____

Researcher's Name and contact information:

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Bibliography

- Agapalo, R. (2009). *Statutory Construction* (6th ed.). Manila: Rex Bookstore.
- Alampay, L. P., & Jocson, M. R. M. (2011). Attributions and Attitudes of Mothers and Fathers in the Philippines. *Parenting: Science and Practice*, 11(2-3), 163-176.
- An act establishing a comprehensive juvenile justice and welfare system, creating the Juvenile Justice and Welfare Council under the Department of Justice, appropriating funds therefore and for other purposes. Republic Act 9344 (2006). Retrieved from http://www.lawphil.net/statutes/repacts/ra2006/ra_9344_2006.html
- An act strengthening the juvenile justice system in the Philippines, amending for the purpose Republic Act No. 9344, otherwise known as the “Juvenile Justice and Welfare Act of 2006” and appropriating funds therefor. Republic Act 10630 (2013). Retrieved from http://www.lawphil.net/statutes/repacts/ra2013/ra_10630_2013.html
- Aslani, A. (2015). Towards an integrated research framework in public policy-focused investigations. In I. R. Management Association (Ed.), *Public Affairs and Administration: Concepts, Methodologies, Tools, and Applications* (pp. 525-537). USA: IGI Global.
- Bactoso v. Provincial Governor of Cebu*, G.R. No. 24046 (1925). Retrieved from http://www.lawphil.net/judjuris/juri1925/sep1925/gr_24046_1925.html
- Berg, B. (2001). *Qualitative research methods for the social sciences* (4th ed.). Needham Heights, MA: Allyn & Bacon.
- Berman, P. (1978). The study of macro- and micro-implementation. *Public Policy*, 26(2).
- Bilog, F. (2014). Implementation of the Juvenile Justice and Welfare Act of 2006 (RA 9344): Inputs to Policy Amendments. *Asia Pacific Journal of Multidisciplinary Research*, 2(3), 54-69.
- Bochenek, M. (2016). Children Behind Bars. The Global Overuse of Detention of Children. Retrieved from <https://www.hrw.org/world-report/2016/children-behind-bars>
- Bührs, T., & Bartlett, R. V. (1993). *Environmental policy in New Zealand: the politics of clean and green?* Auckland, N.Z.: Oxford University Press.
- Cable News Network (2005). Children in Prison. Retrieved from http://transcripts.cnn.com/TRANSCRIPTS/0508/10/i_ins.01.html
- Cable News Network (2006, February). CNN Kids Behind Bars [Video File posted by predal]. Retrieved 20 April 2015 from <https://www.youtube.com/watch?v=oded9fEbvaA>
- Caparas, P. (2003). Children Prisoners in the Philippines: An International Human Rights Law Analysis. In S. Meuwese (Ed.), *KIDS BEHIND BARS - A study on children in conflict with the law: towards investing in prevention, stopping incarceration and meeting international standards* (pp. 91-102). Amsterdam: Defence for Children International.

- Caren, M. (2012). *Spoils System in Philippine Bureaucracy: The Assassin of Political Neutrality*. Retrieved from https://www.academia.edu/19530438/SPOILS_SYSTEM_IN_PHILIPPINE_BUREAUCRACY_THE_ASSASSIN_OF_POLITICAL_NEUTRALITY
- Carlos, C., Lalata, D., Despi, D., & Carlos, P. (2010). *Democratic Deficits in the Philippines: What is to be Done?* Philippines: Center for Political and Democratic Reform, Inc., Konrad Adenauer Foundation, and Centrist Democratic Movement.
- Carlsnaes, W., Risse, T., & Simmons, B. (2015). *Handbook for International Relations*. London: SAGE Publishing.
- Castillo, R. (19 August 2011). Corporal punishment: discipline or abuse, *Philippine Daily Inquirer*. Retrieved from <http://business.inquirer.net/13787/corporal-punishment-discipline-or-abuse>
- Center for International Private Enterprise, & Integrity, G. (2013). *Improving Public Governance: Closing the Implementation Gap Between Law and Practice*. Retrieved from http://www.cipe.org/sites/default/files/publication-docs/GI%20CIPE_Implementation%20Gap_for%20web.pdf
- Cepeda, M. (2016). 2017 budget priorities: Infrastructure, agriculture, peace and order, *Rappler*. Retrieved from <http://www.rappler.com/nation/143116-2017-proposed-budget-priorities>
- Child Rights Network. (2011). Position Paper of the Child Rights Network (CRN) on the Proposed Amendments to the Juvenile Justice and Welfare Act of 2006 (RA 9344). Retrieved from the Philippine House of Representatives Library [unpublished]
- Children's Legal Advocacy Network. (2011). Statement on the Proposed Amendments to Republic Act 9344. Retrieved from the Philippine House of Representatives Library [unpublished]
- Claridades, A. (2013). Philippine Legal Doctrines as complied by Atty. Alvin T. Claridades. Retrieved from <https://attyalvinclaridades.wordpress.com/tag/philippine-legal-doctrines/>
- Coalition to Stop Child Detention through Restorative Justice (Philippines). (2009). *Philippines: Continuing Child Detention with Adults in Police Lockups, Arbitrary Detention of "Rescued" Street Children, and Extrajudicial Execution of Children Accused of Violating the Law*. Paper presented at the 52nd Sessions United Nations Committee on the Rights of the Child, Geneva, Switzerland.
- Consuelo Foundation and UNICEF Philippines (Producers), & Carolino, D. (Director). (2005). *Bunso: The Youngest* [VCD Video Documentary]. Manila.
- Creswell, J. W. (1998). *Qualitative inquiry and research design: Choosing among five designs*. Thousand Oaks, CA: Sage.
- Creswell, J. W. (2007). *Qualitative inquiry and research design: Choosing among five approaches* (2nd ed.). London: SAGE Publications.

- Cruz, R. (2016, March 18). Poverty incidence in Philippines eased in 2015, study says, *ABS-CBN News*. Retrieved from <http://news.abs-cbn.com/focus/03/18/16/poverty-incidence-in-philippines-eased-in-2015-study-says>
- Cullen, S. (2016, January 16). What Philippine officials found in child detention centers, *The Manila Times*. Retrieved from <http://www.manilatimes.net/what-philippine-officials-found-in-child-detention-centers/239813/>
- Defence for Children International. (2010). *Juvenile Justice*. Retrieved from <http://defenceforchildren.org/juvenile-justice/>
- Dela Cruz, M. T., Protacio, E., Balanon, F., Yacat, J., & Francisco, C. (2001). *Trust and power: Child abuse in the eyes of the child and the parent*. Quezon City, Philippines: UP Center for Integrative and Development Studies on Psychosocial Trauma and Human Rights Program.
- Denscombe, M. (2003). *The good research guide for small-scale social research projects* (2nd ed.). Berkshire, UK: Open University Press.
- Denzin, N. K., & Lincoln, Y. S. (2003). *Strategies of qualitative inquiry* (2nd ed.). Thousand Oaks, CA: Sage.
- Detrick, S. (1992). *A Commentary on the United Nations Convention on the Rights of the Child*. Dordrecht: Nijhoff Publishers International.
- Durbow, E., Peña, L., Sesma, A., & Williamson, I. (2001). Mothers' conceptions of child competence in contexts of poverty: The Philippines, St Vincent, and the United States. *International Journal of Behavioral Development*, 25(5), 438-443.
- Enriquez, V. (1994). *From colonial to liberation psychology*. Manila: De La Salle University Press.
- Flyvberg, B. (2006). Five misunderstandings about case-study research. *Qualitative Inquiry*, 12(2), 219-245.
- Fortin, J. (2009). *Children's rights and the developing law*. New York: Cambridge University Press.
- Gerring, J. (2004). What is a case study and what is it good for? *The American Political Science Review*, 98(2), 341-354.
- Global Initiative to End All Corporal Punishment of Children. (2017). *Corporal punishment of children in the Philippines*. Retrieved from <http://www.endcorporalpunishment.org/assets/pdfs/states-reports/Philippines.pdf>
- Global Study on Children Deprived of Liberty. (2014). *Children deprived of liberty: The need for a global study*. Geneva: Defence for Children International.
- Goldson, B., & Muncie, J. (2012). Towards a global 'child friendly' juvenile justice? *International Journal of Law, Crime and Justice*, 40(1), 47-64.

- Government of the Philippines v. Monte de Piedad*, G.R. No. L-9959 (1916). Retrieved from http://www.lawphil.net/judjuris/juri1916/dec1916/gr_l-9959_1916.html
- Grey, K. (2002, March 4). The Philippines – Child Prisoners [Video File posted by Journeyman Pictures and Transcripts from Australian Broadcasting Corporation]. Retrieved 20 April 2015 from <https://www.youtube.com/watch?v=5yo87OON7oo> and <http://www.abc.net.au/foreign/stories/s516102.htm>
- Grossholtz, J. (1964). *Politics in the Philippines: A country study*. Boston: Little, Brown.
- Gubrium, J. F., & Holstein, J. A. (2002). From the individual interview to the interview society. In J. F. Gubrium & J. A. Holstein (Eds.), *Handbook of Interview Research*. Thousand Oaks, CA: Sage Publications.
- Hamilton, C., Anderson, K., Barnes, R., & Dorling, K. (2011). *Administrative detention of children: a global report*. Retrieved from https://www.unicef.org/protection/Administrative_detention_discussion_paper_April2011.pdf
- Hammarberg, T. (2006). *The human rights dimension of juvenile justice*. Paper presented at the Conference of Prosecutors General of Europe, Moscow. Retrieved from <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806da8d8>
- Hjern, B., & Porter, D. (1981). Implementation structures: a new unit of administrative analysis. *Organization Studies*, 2(3), 211-227.
- Holnsteiner, M. (1973). Reciprocity in the lowland Philippines. In F. Lynch & A. De Guzman II (Eds.), *Four readings on Philippine Values* (4th ed., pp. 69-92). Quezon City: Ateneo de Manila.
- House of Representatives of the Philippines. (2004). Committee on Justice Transcript of Deliberations [23 November 2004/BBR/I-1]. 13th Congress. Retrieved from the Philippines House of Representatives Library [Unpublished transcript]
- House of Senate and House of Representatives of the Philippines. (2006). Bicameral Conference Committee on the Disagreeing Provisions of H.B. No. 5065 and SB No. 1402 [06 March 2006/EPT/I-2]. Retrieved from the Philippines House of Representatives Library [Unpublished transcript]
- Institute for Political and Electoral Reform. (2004). *Restudying the Filipino voter today*. Retrieved from http://www.ombudsman.gov.ph/UNDP4/wp-content/uploads/2012/12/FinalPsychographics_HTML.pdf
- John J. Carroll Institute on Church and Social Issues. (n.d.). Position Paper of the John J. Carroll on Church and Social Issues on Proposals to Lower the Minimum Age of Criminal Responsibility, amending Republic Act 9344. Retrieved from the Philippine House of Representatives Library [unpublished]
- Joseph, S., Schultz, J., & Castan, M. (2004). *The international covenant on civil and political rights: Cases, materials and commentary*. New York: Oxford University Press Inc.

- Kang, D. (2002). *Crony capitalism: Corruption and development in South Korea and the Philippines*. Cambridge, UK: Cambridge University Press.
- LeBlanc, L. J. (1995). *The convention on the rights of the child: United Nations lawmaking on human rights*. Lincoln: University of Nebraska Press.
- LeCompte, M., & Goetz, J. P. (1982). Problems of reliability and validity in ethnographic research. *Review of Educational Research*, 52(1), 31-60.
- Liefwaard, T. (2008). *Deprivation of liberty of children in light of international human rights law and standards*. Antwerp: Portland: Intersentia.
- Lipsky, M. (1980). *Street-level bureaucracy: Dilemmas of the individual in public services*. New York: Russell Sage Foundation.
- Macmanus, S., & Millner, S. (n.d.). Reflections on Restorative Justice in the Philippines. Retrieved from <http://philrights.org/wp-content/uploads/2010/10/Reflections-on-restorative-justice-in-the-Philippines.pdf>
- Manco, E. (2015). Detention of the Child in the Light of International Law: A Commentary on Article 37 of the United Nations Convention on the Rights of the Child. *Amsterdam Law Forum*, 7(1), 55-75.
- Macasaet, A. (2010 March 1). A damaged culture and the economy, *Malaya*, p. A3.
- Martin, F., & Parry-Williams, J. (2005). *The right not to lose hope: Children in conflict with the law - a policy analysis and examples of good practice*. London: Save the Children.
- Matland, R. E. (1995). Synthesizing the implementation literature: The ambiguity-conflict model of policy implementation. *Journal of Public Administration Research and Theory: J-PART*, 5(2), 145-174.
- McCracken, G. (1998). *The long interview*. Thousand Oaks, CA: Sage Publications.
- McNabb, D. E. (2004). *Research methods for political science: Quantitative and qualitative methods*. Armonk, NY: M.E. Sharpe.
- Méndez, J. (2015). Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. <http://www.refworld.org/docid/550824454.html>
- Mower, A. G. (1997). *The Convention on the Rights of the Child: International law support for children*. Westport, Conn.: Greenwood Press.
- Najam, A. (1995). *Learning from the literature on policy implementation: A synthesis perspective*. Laxenburg, Austria: International Institute for Applied Systems Analysis.
- Nowak, M. (1993). *U.N. Covenant on Civil and Political Rights: CCPR commentary*. Kehl ; Arlington, Va.: N.P. Engel.
- O'Donnell, D. (1988). The UN Draft Standard Minimum Rules for the Protection of Juveniles Deprived of their Liberty: A legal revolution. *International Children's Rights Monitor*, 22-23.

- Ong, M. (2001). *The Role of the family in Philippine society and in the protection of children's rights*. A Paper Prepared for Philippine-China Development Resource Center-Amity Foundation (17-26 October, 2000). Retrieved from <https://www.scribd.com/document/94525051/jun2k1b>
- Pamantasan ng Lungsod ng Maynila. (1998). *Beyond innocence: Study on the age of discernment of Filipino children*. Manila: University Research Centre.
- Philippine Action for Youth Offenders. (2002). *Arrested Development: The level of discernment of out-of-school children and youth*. Manila: PAYO & UNICEF.
- Pinheiro, P. S. (2006). *World report on violence against children*. Geneva: United Nations.
- Plesó v. Hungary*, No. 41242/08 (European Court of Human Rights 2013).
- Protacio-de Castro, E. (2005). Negotiating trust and power: Parenting in the context of conflict resolution. from Psychosocial Trauma and Human Rights Program, Center for Integrative and Development Studies, University of the Philippines, and Save the Children
- Pulse Asia Research Inc. (2016). Pulse Asia Research's December 2015 Nationwide Survey on Urgent Personal and National Concerns of Filipinos. Retrieved from <https://drive.google.com/file/d/0B3b9qPFV1cRDVGnpZHZoWUVmcTA/view?pref=2&pli=1>
- Resolution 632, Series of 2011. "Supporting the Amendment of Section 6A of Republic Act No. 9344 Otherwise known as the Juvenile Justice and Welfare Act of 2006 by Reducing the Minimum Age of Criminal Responsibility from 15 years old to 9 years old". Provincial Council of Surigao del Sur. Retrieved from the Philippine House of Representatives Library [unpublished]
- Resolution No. 10503, Series of 2011. "Resolution Earnestly Requesting the House of Representatives to Review and Revisit Republic Act 9344, Otherwise known as the "Juvenile Justice and Welfare Act of 2006", particularly Section 6 (Minimum Age of Criminal Responsibility), Sections 23-31 (Diversion) and Section 38 (Automatic Suspension of Sentence)". City Council of Cagayan de Oro. Retrieved from the Philippine House of Representatives Library [unpublished]
- Resolution No. 10615, Series of 2011. "Resolution Earnestly Requesting His Excellency President Benigno C. Aquino III and Congress of the Philippines to Temporarily Suspend the Implementation of R.A. 9344, or the Juvenile Justice System, Until Such Time that Rehabilitation Centres as Provided Therein Are Established all over the country". City Council of Cagayan de Oro. Retrieved from the Philippine House of Representatives Library [unpublished]
- Resolution No. 11-98, Series of 2011. [No Title]. City Council of Iligan. Retrieved from the Philippine House of Representatives Library [unpublished]

- Resolution No. 11, 282, Series of 2011. “Resolution Urging Two Houses of Congress by Way of Support to the Resolution No. 11-98 Passed by the Sangguniang Panglungsod of Iligan City to Urgently Initiate, Review, and Revisit Pertinent Provisions of R.A. 9344, Otherwise known as the “Juvenile Justice and Welfare Act of 2006 for Possible Repeal, Revision or Amendments to Address the Alarming Escalation of Numbers of Children in Conflict with the Law”. City Council of Iligan. Retrieved from the Philippine House of Representatives Library [unpublished]
- Resolution No. 12-1038, Series of 2011. [No Title]. City Council of Cebu. Retrieved from the Philippine House of Representatives Library [unpublished]
- Resolution No. 12-193, Series of 2010. [No Title]. City Council of Cebu. Retrieved from the Philippine House of Representatives Library [unpublished]
- Resolution No. 120, Series of 2010. “Resolution Expressing Strong Support to Resolution No. 71, Series of 2010 of the Sangguniang Bayan of the Municipality of Sto. Tomas, Davao del Norte, requesting both the House of Senate and House of Representatives to Revisit R.A. No. 9344, Otherwise Known as the “Juvenile Justice and Welfare Act of 2006” for the Amendment of Section 6, Chapter 2 of said Law”. City Council of Island Garden City of Samal. Retrieved from the Philippine House of Representatives Library [unpublished]
- Resolution No. 139, Series of 2010. [No Title]. City Council of Surigao. Retrieved from the Philippine House of Representatives Library [unpublished]
- Resolution No. 1429, Series of 2011. “Supporting the Proposal made in the Senate and House of Representatives to Revisit the Provision on the Minimum Age Requirement for Criminal Responsibility under R.A. 9344 or the Juvenile Justice and Welfare Act of 2006”. City Council of Cebu. Retrieved from the Philippine House of Representatives Library [unpublished]
- Resolution No. 1479, Series of 2010. “Urging the Philippine Congress to Review for Possible Amendment the Juvenile Justice and Welfare Act (Ra 9344), Especially Section 6, Which Exempts a Child Aged 15 Years Old or Below who is in conflict with the law from Criminal Liability”. Provincial Council of Cebu. Retrieved from the Philippine House of Representatives Library [unpublished]
- Resolution No. 1576, Series of 2010. “Supporting House Bill 2894 Seeking to Lower the Minimum Age of Criminal Liability of a Child in Conflict with the Law (CICL) from Fifteen to Ten Years of Age and Urging Congress to Contemplate on the Reports about Improper, Ineffective and Inefficient Implementation of R.A. 9344, Otherwise known as the “Juvenile Justice and Welfare Act of 2006”. Provincial Council of Cebu. Retrieved from the Philippine House of Representatives Library [unpublished]
- Resolution No. 193, Series of 2011. “Resolution Supporting the Suspension of the Implementation of Republic Act 9344 (Juvenile Justice and Welfare Act of 2006) on the Lowering of the Age of Criminal Liability from 15 years old to 9 years old”. Provincial Council of Cagayan. Retrieved from the Philippine House of Representatives Library [unpublished]

- Resolution No. 208, Series of 2011. “A Resolution Supporting the Call for the Congress to Revisit and Amend the Juvenile Justice and Welfare Act of 2006 (R.A. 9344) especially Section 6, thereof”. Municipal Council of Labo, Camarines Norte. Retrieved from the Philippine House of Representatives Library [unpublished]
- Resolution No. 2337, Series of 2011. “A Resolution Respectfully Conveying to the House of Representatives and to the Senate of the Philippines the Favourable Stand of the Sangguniang Bayan of Compostela Valley on the Proposed Reduction of the Age from 15 to 9 years old for Juvenile Offenders”. Municipal Council of Compostela. Retrieved from the Philippine House of Representatives Library [unpublished]
- Resolution No. 303, Series of 2012. “Na Mapitagang Humihiling sa Bumubu ng Kongreso ng Republika ng Pilipinas na Amedahan ang Republic Act 9344”. Municipal Council of Guiguinto, Bulacan. Retrieved from the Philippine House of Representatives Library [unpublished]
- Resolution No. 323, Series of 2011. “Resolution Strongly urging Congress to Revisit and Consider an Amendatory Law on Republic Act 9344, Otherwise known as the “Juvenile Justice and Welfare Act of 2006”, Particularly the provision on paragraph 2, Section 6, Chapter II, Exempting a Child Above Fifteen Years but Below Eighteen Years of Age from Criminal Liability”. City Council of Manila. Retrieved from the Philippine House of Representatives Library [unpublished]
- Resolution No. 49, Series of 2011. “Amend Republic Act (RA) 9344 of 2006 “Establishing Comprehensive Juvenile Justice and Welfare System” and recommend to implement back the old PD 603 particularly 189, 190 and 192”. Municipal Council of Claveria, Misamis Oriental. Retrieved from the Philippine House of Representatives Library [unpublished]
- Resolution No. 51, Series of 2012. “Resolution Requesting the Congress of the Philippines to Conduct and/or Re-study Republic Act No. 9344, Otherwise known as the “Juvenile Justice and Welfare Act of 2006”. Provincial Council of Albay. Retrieved from the Philippine House of Representatives Library [unpublished]
- Resolution No. 539, Series of 2011. “Resolution Strongly Supporting the Pending Proposed Legislation in the Congress of the Philippines Seeking to Amend R.A. No. 9344 Otherwise known as the Juvenile Justice and Welfare Act of 2006 by Lowering the Minimum Age of Criminal Responsibility from Fifteen years old to Twelve years old”. City Council of Dipolog. Retrieved from the Philippine House of Representatives Library [unpublished]
- Resolution No. 71, Series of 2010. “A Resolution Requesting both the House of Senate and House Representatives to Revisit R.A. 9344, Otherwise known as the “Juvenile Justice and Welfare Act of 2006” for the Amendment of the Provisions of the Said Law as herein specifically mentioned”. Municipal Council of Sto. Tomas. Retrieved from the Philippine House of Representatives Library [unpublished]
- Resolution No. 9629, Series of 2012. “Supporting the Move in Congress to Amend R.A. 9344 due to Increasing Number of Youths Involved in Criminal Activities in Different Parts of the Country”. City Council of Puerto Princesa. Retrieved from the Philippine House of Representatives Library [unpublished]

- Resolution No. SP-5629, Series of 2012. “A Resolution Urging the Congress of the Philippines to Amend Section 6 of Republic Act No. 9344, Otherwise Known as the “Juvenile Justice and Welfare Act of 2006”, so as to lower the age of criminal responsibility for minors”. City Council of Quezon. Retrieved from the Philippine House of Representatives Library [unpublished]
- Reyes, J. (2015). Loób and Kapwa: An introduction to a Filipino virtue thics. *Asian Philosophy*, 25(2), 148-171.
- Ritchie, J., & Spencer, L. (1994). Qualitative data analysis for applied policy research. In A. Bryman & R. Burgess (Eds.), *Analyzing qualitative data* (pp. 173-194). London: Routledge.
- Ronda, R. A. (2014, June 19). P400 M allotted for juvenile justice law, *The Philippine Star*. Retrieved from <http://www.philstar.com:8080/nation/2014/06/19/1336284/p400-m-allotted-juvenile-justice-law>
- Sanapo, M. (2012). What Filipino mothers say: Disciplinary practices of Filipino mothers in rural Philippines *Ugong*, 5(1), 2-15.
- Save the Children UK. (2004). *Breaking rules: Children in conflict with the law and the juvenile justice process - the experience in the Philippines*. Quezon City: Save the Children-UK.
- Schabas, W., Sax, H., & Alen, A. (2006). *Article 37 Prohibition of torture, death penalty, life imprisonment, and deprivation of liberty: A commentary of the United Nations Convention on the Rights of the Child*. (pp. 1 online resource). Retrieved from <http://site.ebrary.com/lib/uofcanterbury/Top?id=10355185>
- Schramm, W. (1971, December). *Notes on case studies of instructional media projects*. (ED092145). Washington, Educational Resources Information Center, USA.
- Scott, J. (1972). Patron-client politics and political change in Southeast Asia. *The American Political Science Review*, 66(1), 91-113.
- Senate of the Philippines. (2005). *Journal of Session No. 28, 13th Congress, Second Regular Session*. Retrieved from <https://www.senate.gov.ph/lisdata/41456041!.pdf>
- Smith, T. (1973). The policy implementation process. *Policy Sciences*, 4(3), 197-209.
- Srivastava, A., & Thomson, S. B. (2009). Framework analysis: A qualitative methodology for applied policy research. *JOAAG*, 4(2), 72-79.
- Stake, R. (1995). *The art of case study research*. Thousand Oaks: Sage.
- Symonides, J. (Ed.) (2000). *Human rights: Concepts and standards*. Burlington, Vt.: Ashgate; Paris: UNESCO.
- Tabios, E. (2011). Position Paper of the Philippine Action for Youth Offenders (PAYO) on the Proposed Amendments to Republic Act No. 9344. Retrieved from the Philippine House of Representatives Library [unpublished]

- Timberman, D. (1991). *A changeless land: Continuity and change in Philippine politics*. Singapore: Institute of Southeast Asian Studies.
- UN Committee on the Rights of the Child (CRC). (1994). Reservations, declarations and objections relating to the Convention on the Rights of the Child - Note by the Secretary-General. (CRC/C/2/Rev.3). Retrieved 12 December 2015 <http://www.refworld.org/docid/3ae6aeda4.html>
- UN Committee on the Rights of the Child (CRC). General comment No. 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19; 28, Para. 2; and 37, inter alia). (CRC/C/GC/8). Retrieved 6 May 2017 <http://www.refworld.org/docid/460bc7772.html>
- UN Committee on the Rights of the Child (CRC). General comment No. 10 (2007): Children's Rights in Juvenile Justice. (CRC/C/GC/10). Retrieved 6 May 2017 <http://www.refworld.org/docid/4670fca12.html>
- UN Committee on the Rights of the Child (CRC). General Guidelines for Periodic Reports (1996): General Guidelines Regarding the Form and Contents of Periodic Reports to be Submitted by States Parties under Article 44, Paragraph 1 (B), of the Convention. (CRC/C/58). Retrieved 6 May 2017 http://www.childoneurope.org/issues/crc_committee/su06-General-Guidelines-for-Periodic-Reports.pdf
- UN General Assembly. (1990). Convention on the Rights of the Child. Retrieved 6 May 2017, from United Nations, Treaty Series <http://www.refworld.org/docid/3ae6b38f0.html>
- UN General Assembly. (1985). UN General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"): Resolution / adopted by the General Assembly, 29 November 1985. (A/RES/40/33). Retrieved 6 May 2017 <http://www.refworld.org/docid/3b00f2203c.html>
- UN General Assembly. (1991). United Nations Rules for the Protection of Juveniles Deprived of Their Liberty: Resolution/adopted by the General Assembly, 2 April 1991. (A/RES/45/113). Retrieved 6 May 2017 <http://www.refworld.org/docid/3b00f18628.html>
- UN Human Rights Committee (HRC). (1982). CCPR General Comment No. 8: Article 9 (Right to Liberty and Security of Persons). Retrieved 12 December 2015 <http://www.refworld.org/docid/4538840110.html>
- UN Treaty Collection. (2017). *Status of the Convention on the Rights of the Child*. Retrieved from https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en
- UNICEF Philippines. (2015). Positive parenting helps children develop their full potential. Retrieved from https://www.unicef.org/philippines/media_24075.html#.WQ_SSVOGO34
- UNICEF. (2010). *Global study on child poverty and disparities: The case of the Philippines*. Retrieved from [www.unicef.org/socialpolicy/files/Philippines_GlobalStudy\(1\).pdf](http://www.unicef.org/socialpolicy/files/Philippines_GlobalStudy(1).pdf)

- Universalia. (2015). *Evaluation of the intervention and rehabilitation program in residential facilities and diversion programs for children in conflict with the law* Retrieved from https://www.unicef.org/evaldatabase/files/Philippines_2015-004_Final_Report.pdf
- Van Bueren, G. (1995). *The international law on the rights of the child*. Boston: Martinus Nijhoff.
- Van Meter, D., & Van Horn, C. (1975). The Policy Implementation Process: A Conceptual Framework. *Administration & Society*, 6(4), 445-488.
- World Organization Against Torture, & Children's Legal Rights and Development Center. (2016). *Ill-treatment and torture of children deprived of liberty in the Philippines*. Retrieved from http://www.omct.org/files/2016/04/23738/philippinescatreport_final_newversiondocx.pdf
- Wufrel, D. (1988). *Filipino politics: Development and decay*. Ithaca: Cornell University Press.
- Yilmaz, S., & Venugopal, V. (2013). Local government discretion and accountability in Philippines. *Journal of International Development*, 25(2), 227-250. doi: 10.1002/jid.1687
- Yin, R. K. (1982). Studying the implementation of public programs. In W. Williams (Ed.), *Studying Implementation: Methodological and Administrative Issues*. New Jersey: Chatham House Publishers Inc.
- Yin, R. K. (2009). *Case study research: Design and methods* (4th ed. Vol. 5). Thousand Oaks, CA: SAGE Publications.